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In The Supreme Court of the United States

RONALD ROMPILLA,

Petitioner,

v.

JEFFREY A. BEARD, Secretary,
Pennsylvania Department of Corrections,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT APPENDIX
VOLUME IV, PAGES 653 TO 938

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COURT OF COMMON PLEAS OF LEHIGH COUNTY

CRIMINAL

COMMONWEALTH
OF PENNSYLVANIA

vs.

RONALD ROMPILLA

No. 1988/682

* * *

NOTES OF TESTIMONY

Heard before The Honorable Thomas A. Wallitsch, J., on March 29, 1996.

APPEARANCES:

Jacquelyn C. Paradis, Esq., and Michael P. McIntyre, Esq., (Atty. McIntyre appeared at the afternoon session only.)
for the Commonwealth

Michael Wiseman, Esq., and
Billy H. Nolas, Esq.,
for the Defendant

* * *

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[3] THE COURT: All right. Mr. Charles.

MR. CHARLES: Good morning, your Honor.

FREDRICK E. CHARLES, ESQ.

resumed the witness stand and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (con'd)

BY MR. WISEMAN:

Q. Good morning, Mr. Charles.

A. Good morning, Mr. Wiseman.

Q. I neglected to ask you this yesterday. Did you ever review the post-conviction petition filed in this case?

A. No.

Q. Have you spoken with anyone about this case or about your testimony since yesterday?

A. About my testimony? No.

Q. Before we discuss Mr. Rompilla's penalty phase in detail, I just wanted to get some sense of your expertise in the area. At the time you represented Mr. Rompilla in 1988, had you ever done a capital case before?

A. To a jury verdict?

[4] Q. Yes.

A. No.

Q. Had you ever represented someone who potentially was looking at the death penalty?

A. Yes.

Q. Oh how many occasions?

A. Oh, geez.

Q. You you can give a ball park figure.

A. I would say half a dozen. I mean I'm – I represented people in numerous murder cases. I had the murder case – one of the codefendants with the little girl who drowned by the Lehigh River. I had a codefendant – or I had a man who murdered his wife. I represented him along with cocounsel. I had – you know, it's like a blur. This case that just came down, the Yohn case, that received a lot of publicity, I had one of the codefendants in

that when that case started out. That, I believe, originally started out – I could be wrong, but at least we were told there were possibilities of that being a capital case. I might be wrong on that, but that was my recollection. I had a double homicide on the east side which were to be capital cases, and then – but I got the murder charges dropped at the [5] magistrate. And I went to jury with that. But that – my charges were, I think, hindering apprehension, where the other two codefendants were charged with first degree murder. I had the case of Commonwealth versus Meixsell. I tried that to a jury. But that was not capital. That was – in fact, we did a group voir dire in that.

So I think I had several cases that were capital offenses, but they had never reached to the jury stage. And then I had tried – I picked a jury in the one case where it started out as a double homicide, but then part of the way through that we received a plea bargain from the Commonwealth where my client was to receive I think two years, and we took that. And I'm probably missing a couple. But, you know, I had done several murder cases. I'd say over a dozen. And I think at least half or a good percentage were capital offenses.

Q. All right. So the point being that you've had – prior to Mr. Rompilla's case, you had some experience in getting ready for and preparing and litigating a potentially capital matter.

A. Not only myself personally, but I also [6] helped my assistants. I know that before Mr. Rompilla's case we had a potential death penalty case – several of them – that I had assistants that were doing that I helped prepare also those cases. So, yeah, I have been involved in preparation

for death penalty cases or capital offenses numerous times.

Q. Now, yesterday Miss Dantos testified that she had been out of law school about two years at the time of the Rompilla trial.

A. Yeah, probably. I think she started in March. She started in February of '86 with our office. She was an attorney. February of '86. And the Rompilla trial began, I believe, in October – it was October of '88. So she had about two and a half years.

Q. So she was considerably junior to you in this case, obviously.

A. Junior to me, yes.

Q. Yes. And, as you said yesterday, you assumed and continue to assume full responsibility for the decision making and the preparation and such in the case?

A. Absolutely. But let me tell you something. Don't assume, because Miss Dantos was [7] junior to me, that she was junior in experience or junior in ability. Two and a half years in the Public Defender's Office, being time-tested with her caseload, she was anything but junior or inexperienced or a neophyte. She was junior to me simply by age and years in, but she certainly had experience. And any judge in this courthouse will tell you what a terrific assistant public defender she was.

Q. All right. Now, in preparing your capital case – in preparing this case, you certainly are aware of the importance of mitigating factors.

A. Correct.

Q. And, in fact, in your – what's been marked as Commonwealth Exhibit 1, your October 14th, 1988, plea letter to Mr. Rompilla, you refer to the importance of mitigating factors in his case.

A. Correct.

Q. And you went so far as to actually recite verbatim the entire death penalty statute, including all the mitigating factors that theoretically apply to any – not theoretically but that apply to any capital case.

[8] A. Correct.

Q. Now, three potential mitigating factors in any capital case that are obviously recited in your letter – and I will refer to them by the shorthand of E-2, E-3, and E-8.

A. Okay.

Q. And by that particular – you're aware of E-2, the defendant was under the influence of extreme mental or emotional disturbance?

A. Correct.

Q. And E-3, that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law are substantially impaired?

A. Correct.

Q. And then there's the catchall E-8, any other evidence of mitigation concerning the character and record of the defendant and the circumstances of the offense.

A. Correct.

Q. So you were obviously aware of those, and you counseled Mr. Rompilla on them; right?

A. Correct.

Q. Now, would you agree with the proposition that counsel has a duty, in preparing [9] a capital case, to fully investigate their client's background?

A. Correct.

Q. And that's because the catchall mitigator even uses the words "background of the defendant" as a potential mitigating factor; is that right?

A. Correct. Yes. "Fully investigate," though, is somewhat of a subjective term. But fully investigate given the resources and given what you have, I guess for lack of a better word, in way of time leading in. "Fully investigate" to somebody who has one case and nothing else compared to somebody who has 120 cases – what's full investigation? It could mean different things to different people. But I agree that you should use your maximum resources to investigate, you know, a capital offense and anything else that would help your client.

Q. Sure. In regard to that duty to investigate, would you agree with the proposition that it applies not only to the E-8 catchall but to mental health mitigators E-2 and E-3?

A. Yes.

Q. Would you agree with the proposition [10] that your duty to investigate for mitigation is equal to your duty to investigate the guilt phase?

A. Yes.

Q. Now, when you prepare for a capital case, in your experience, and you investigate and gather material, depending on what material it is, you might give it to an expert to evaluate.

A. You might.

Q. Depends what it is, obviously.

A. If you have anything, you might, yes. Whatever you have.

Q. Now, in regard to the two mental health mitigators and to the catchall mitigator, what are some of the obvious things that you would look at in preparing for the penalty phase of the capital case?

A. Okay. Well, the catchall is you look at anything. I know of a case – and we even talked about a case that Mr. Moyer, who was the D.A. in our case – there was interim – before he did our case, he had a capital offense with an individual where there were something like seven aggravating or six very severe aggravating factors or five aggravating factors, and the only mitigating factor was that he had once broken up a fight at [11] the Seven-Eleven Store. And the jury weighed that over the five aggravating factors and gave the defendant life. So in investigating on the catchall, you look for anything. Okay. That's a little different than investigating what you're going to do on the, you know, in effect, diminished capacity/ mental infirmity type mitigators. I think what we did or what –

Q. We're not up to what you did yet. I'm just trying to get a sense –

A. Well, you would take advantage – I mean you would investigate. You would speak with the defendant. You would investigate as best you can to determine whether or not this person suffered from some kind of psychiatric problems or had a history of psychological problems. And then you would get – I would get that to a professional, since I'm not a professional in that field, and I would try and let the professional conduct the testing and determine whether or not there was – I think that the mitigators – that the other two are more so for a professional testimony than the lay testimony. And I would get that to a professional to try and develop it.

Q. Let me ask you this. Would an obvious [12] thing to look at, both in regard to the two mental health mitigators and the catchall, be that you would speak to the defendant's family and acquaintances, friends, things of that nature?

A. Yes.

Q. And would you inquire into the defendant's living situation at the time of the commission of the offense?

A. Yes.

Q. Was the person living in a mansion or was the person living on the street?

A. Yes.

Q. Would you look back in time at the person's living situation as they grew up? Were they a child that had everything that he needed and love and attention? Were they a child who was brought up homeless?

A. That might – you might look to that. You might and you might not.

Q. Well, we're talking now about investigation. What –

A. Well – okay.

Q. Let me ask my question. What – leaving aside your resource question, do you have any reason why you wouldn't investigate whether your [13] client was raised as a homeless child?

A. I would investigate by asking my client, "How was your childhood? Were there any problems that you suffered? Any kind of abuse? Tell me something about – is there anything you can tell me from your youth till now that can help us? Tell me, is there anything that sticks out? Don't think whether it's important or not. You just tell us, and then we'll determine whether or not we can use it." Investigate it that way. Would I send somebody to the person's elementary school to talk to the teacher to see if they remember him from 25 years or 40 years before? No, I didn't have those resources in the office. So I would do an investigation. But again, "investigate" is a subjective term. Investigate given what your resources are in light of the office. I had two investigators and 2,000 cases. And I'm sure you know the difficulties with bugeting [sic] caseloads and having to get investigations done given the resource you have. I will talk to the client, talk to the family, and see if anything developed from there. If something did, we would then amplify on it and develop it. If it didn't, we would go from there. There's a certain point in [14] time when you have two or three thousand cases in a year that you have to deal with some of the things your client tells you and give that some full faith and credit and rely on it.

Q. All right. In this particular case Mr. Rompilla told you a number of things about his involvement in the commission of the offense that you didn't believe – withdrawn. He told you a number of things that you checked out and subsequently determined probably weren't true.

A. He told – yes.

Q. He told you a couple stories. You didn't think that they were quit [sic] right. Or he told you to check them out, and you checked them out.

A. He told us stories. We investigated them. We tied up investigators. We went and checked them and found, one by one, the stories to be just absolute fabrications.

Q. So he told you more than one story?

A. Yes.

Q. He told you different versions of the events. You checked them out seriatim, and they each proved, in your view, not to be quite accurate?

[15] A. They – if you want me to use that term, "not to be quite accurate" is a way to put it. They proved to be just bold-faced, outright lies.

Q. I think in your plea letter you actually refer to him throwing a curve to Miss Dantos.

A. He said to me, after we sent our investigator out for days to follow up on one of his stories – no, that was on a different one. After he told us one of his stories and then we hired experts to come in to follow it and they told us that story is literally impossible, we went back to him and said, "This one is impossible." And then – "And here's why. We have evidence, and it's absolutely forensic evidence

that what you're telling us is impossible." And then he said, "Well, okay, that's right. But I wanted to see how sharp Miss Dantos was, so I threw her a curve."

Q. All right. So you went to some lengths, both in terms of the expenditure of time and resources, to check out his guilt phase version of the events; is that right?

A. That was on the guilt phase, yes.

Q. I understand. That's what I'm asking. Now, do you think counsel in a capital case has an [16] obligation in preparing for the penalty phase – and perhaps even the guilt phase – if there's a mental health issue, to obtain prior records about your client? Would you look for a rap sheet, want to know if your client has priors?

A. Well, I would get a rap sheet as part of the discovery. So I wouldn't look for it. That – I would expect that in discovery. I would talk to my client, see if there is anything that he tells me or that his family tells me that sets up a flare that there's a problem. Then from there I would have my client interviewed, examined, and tested by an expert. And if the expert needed information, I would do my doggone best to get it. But I would get him to an expert. I would not determine that this might be important psychologically that this happened. I would let an expert say, you know, "In testing him, in talking to him, he told us that this happened, and we think it's important. Go obtain it." So, I mean, I can't be any clearer. I talk to the client and have the client tested for the purposes of those mitigating factors that I think require expert testimony.

Q. Very good. Now, do I take it that [17] routinely what you're saying is you would not – withdraw it. Is what

you're saying that you would not routinely, in a capital case, order your client's school records?

A. That's correct.

Q. You wouldn't routinely order military records?

A. That's correct.

Q. You wouldn't order hospital records?

A Order hospital records from where? Would I go and find out where my client – I mean –

Q. Would you try to get your client's birth records?

A. No.

Q. Would you look at the files related to any prior convictions that the prosecution intends to use in the capital case?

A. Depending on the time. If the prior conviction is one that's recent, I might. If it's one that's stale, I might not because of the length of time that's passed. What happened with somebody, you know, 20 years before may not be as relevant. And so, depending on the nature of the crime, the length and time between that crime and [18] this crime, there's a lot of factors that would enter into whether or not I would go looking for a prior document.

Q. Well, let me ask you a little more specifically with regard to Mr. Rompilla's case. In your plea letter, which was written approximately two months before trial started, you make reference to the testimony that is going to be read into the record regarding the prior rape.

A. My plea letter was rendered four days before trial started.

Q. Oh, my mistake. I'm sorry.

A. Okay.

Q. My mistake.You're right. It's October. Is it safe to say in your October 18th letter –

A. October 14th, Mr. Wiseman.

Q. You're right again, October 14th, 1988. You were aware at that point that the District Attorney was going to use that transcript.

A. He was going to attempt it. I told you that he also said if he takes – If Mr. Rompilla takes the stand, I'm going to – and in any way brings into question his representation or character, I'm going to try and impeach it with [19] bad acts," which we knew about of acts where he had been alleged to have committed another rape and to have beaten an older man, both of which were never followed through, and that we knew they were going to try to do that. We were going to try and stop that. We were going to try and object to their putting on the testimony of the prior rape. Those are some of the things that Mr. Moyer was very forthright in telling us that he was going to try to do, which is why we put it in the letter to Mr. Rompilla as soon as Mr. Moyer told us.

Q. Do you remember roughly how long before the writing of the plea letter that you knew they were going to use that transcript or try to use the transcript?

A. I'd have to look at the letter. I thought that Mr. Moyer told us a couple days before. He might have told us before. I thought – it's in the letter I think. But I'm not sure how much in advance. I thought he told us at the

time the plea bargain – it might be October 12th or something like that. I'm not sure of the day on that.

Q. Okay. That's fine. Just so I fully [20] understand – getting back to the penalty phase, just so I understand your position, you investigate based upon what your client tells you?

A. No, that's not my position. Okay. I know how you want to simplify this. But – and so I don't know if I can answer you in the terms of your question. But I'll try. We investigate the evidence that we have, the evidence that's given in a preliminary hearing. We look at the probable cause affidavit. We look at the examination that we took in this case from the preliminary hearing. We looked at the evidence that came forth during the suppression hearing. We looked at the evidence that –

Q. I'm talking about the penalty phase.

A. But whatever came, we – you know, you don't – we don't sit and separate it. It's an investigation. The penalty phase is something that we keep an eye on. But I have to tell you in this case you had a very, very objecting client. Whenever we tried to talk penalty phase and death penalty with him, he was resistant to that.

Q. Let's discuss that.

A. Sure.

Q. Let's discuss that. What I thought you [21] said just before was that you sit down with your client and you say, "Tell me how you [sic] schooling was," and your client would say, "I did okay in school." We're talking hypothetically. All right? If you have a client who is reluctant to discuss how his schooling was because he doesn't really

want to talk about the penalty phase, do you, as counsel, have a duty to go further than just talking to your client about it?

A. It depends.

Q. Depends on what?

A. It depends on what evidence you have in the case. It depends on what he's told you.

Q. You –

A. Let me finish, Mr. Wiseman. He didn't tell us, "I'm not willing to talk to you about my schooling. I'm reluctant to talk about my this." He said there was nothing wrong. "Is there anything that happened? What was it like growing up? Is there anything you can tell us that could help us?" And he said, "No, there was nothing wrong." He was very, very, very smooth about it. It wasn't that he was reluctant to talk about anything. He said, "Your conversations about the possibility of the death penalty bore me." He [22] said, "I have home box in my room that I can watch, and I'm bored being here listening to it, and I'm going to go watch home box," and he walked out. That's why, when we tried to go through the death penalty phase with him and he left, we wrote it in that letter. And I said, "Since you won't hear it when we sit there, it bores you, I want you to at least read it." His reluctance wasn't an overall reluctance where he said, "I don't want to talk about my childhood, because it's too painful. There was no indicator from anything he told us that would send us searching for elementary school records, high school records, any kind of records. He said everything was fine. He had a normal childhood. There was nothing there. And

so no, we didn't go beyond that. And my professional opinion is that, given what Ron Rompilla told us during the numerous discussions we had with him and the countless discussions that John Whispell, our deceased investigator, had with him and was over to see him constantly, there was nothing that came across our table that would make us go looking for his elementary school records, his home life records, or anything. And if he knew of anything or his family knew of anything, [23] they never told us. And I know most certainly that we asked, and I know Miss Dantos asked.

Q. Asked what?

A. "What can you tell me about Ron? What was it like for him? What was his life like? What was it like growing up? What was his relationship? What kind of a brother was he? What kind of a brother-in-law was he? What do you know?" Their response was they hardly know him. I mean one said, "He was in a reformatory. He's been away the whole time. We didn't know him that well." Things of that nature. But I remember her specifically going one by one and talking to him. "Is there anything you can tell me? Tell me about yourself. Tell me about your background." She was, you know, meticulous to cover points. And she had a way of doing that, because she was legitimately concerned. And I thought it was disarming. They engaged in numerous what I considered to be cordial conversations. Some of the times I felt like I was in the way even being in the room, and I'd go get coffee. And she would sit down, and so would John Whispell. John Whispell was like a buddy with them, and they would go over and talk. "Tell me about yourself." [24] We undertook to try and determine from him and his family whatever

information we could. Nothing came across to us that made us do what you're asking about.

Q. All right. Are you aware of the dynamics that exist among people who are subject to child abuse, that they don't readily like to talk about those kinds of things? Is that something that you –

A. Sure.

Q. – see in your experience?

A. Sure.

Q. So you go to an adult – well, let's say – well, you go to an adult who may have had an abusive childhood, and you say, "How was your childhood? and the person says it was fine. Would you agree that, given your awareness of the abuse dynamics, that maybe it would be more prudent to go beyond the client and beyond those who may have abused the client to look for other indications of abuse?

A. It may in a vacuum. But, my goodness, you have – with 2,000 defendants you have over 50 percent that tell you, "Yes, I've been beaten. I've been raped. I've been molested." I mean, [25] what's the difference? It's hard to determine when someone says, "No, I had a great childhood. I had no problems," the difference between that and being in denial. I mean we talked to him more than once, and we believed that there was nothing outstanding. His family didn't tell us anything. I mean maybe the family would say, "Hey, you know don't believe him, because he was one heck of an abused kid." That never was volunteered. It was never told during any of the times that we talked to them. You know, even if Ron denied it, I mean, somebody in the family would have known it. His wife

would have known it. Somebody would know it to tell us. And I don't think that it's looking back and I really think it's classic. I don't want to say that. You're looking back at it in a vacuum. Because when he says, "No, there's nothing there," you know, what's the difference between the truth, there was nothing there, and classic denial? I'm not an expert. That's why I send them to an expert.

Q. All right.

A. And I figure that Dr. Cooke or Dr. Sadoff or Dr. Gross, who do this for a living, might be able to say, "There's something in the [26] way he denied this that shows it's classic denial syndrome, and we ought to explore it a little bit." So I get him away from me making that call. I'm a lawyer. I'm not a psychiatrist or a psychologist. And so I get him to a pro, and then I get on with the business of preparing the rest of my case. And that's what we did with Ron Rompilla's case.

Q. Now, obviously you're testifying that you – withdraw it. You're testifying that you spent a great amount of time and energy talking to the family to try to get to any issues that might have been there. My question –

A. Let me tell you that's not what I testified to. We spent a great amount of time talking to Ron Rompilla. We talked to Ron's family at different times. And different ones of us – John Whispell spent his time talking to Ron's family and investigating the leads and the wild-goose chases that Ron sent us on. Maria Dantos spent time talking with the family intermittently over the period of the course this case was proceeding in. So I'm not saying that I sat and spent –

Q. The defense team did.

[27] A. We did it at different times, and cumulatively we spent a lot of time talking to them, but not in any one bunch.

Q. Let me ask you this then. You know where the Allentown School Board is?

A. Yes.

Q. It's across the street –

A. That's correct.

Q. – from the courthouse; is that right?

A. Yes.

Q. All right. Some 300 yards away?

A. I don't know. Could be 300. It's across the street.

Q. Would you have considered it an undue expenditure of time to walk across the street, which may have taken you five minutes, and ask for Ronald Rompilla's school records?

A. Yes.

Q. That would have been an undue expenditure in time?

A. Yes, given the fact that we sent Ron Rompilla to two – the best forensic psychiatrist around here, to a tremendous psychiatrist and a fabulous forensic psychologist. I would walk across there – I would drive to Pittsburgh to get [28] his records if they felt it was necessary. But to get his records generally without anything else telling us that was necessary or that would be helpful, I would be spending my time on other things. But had

anybody said, "You know what we need here professionally? We need Ron Rompilla's school records," then I wouldn't think that it would be an expenditure of time to go to California to get them, and we would have gone and gotten the records from there or Missouri like we've done in the past. We would have gotten them if someone told us they were relevant. But on my own would I have just said, "Geez, I want to take a look at his records"? I wouldn't be able to interpret what those records mean and whether or not they fit into any kind of psychological profile or diminished capacity anyway. If I read them, they would be meaningless to me. And if Mr. Cooke, Dr. Sadoff, or Dr. Gross wanted them, we'd have gotten them.

Q. Let me ask you this. If you have evidence in a capital case that your client is mentally retarded, is that something that you ought to give to the mental health experts for their evaluation?

[29] A. I think I would give that to them to assist them. Maybe it's for background. Let them – I don't know whether that figures in or not. I would give it to them.

Q. Well, let me ask you something.

A. I would give it, but I would think that that would be something that they would want to know. If it's obvious that he's determined to be mentally retarded, I think that, you know – but they probably would figure that out themselves after they interviewed the person, and they probably might not need that. I would think – I would hope they would know that.

Q. Would evidence of mental retardation be something that you would want to present under the catchall "background of the defendant"? Is that something you

want the jury to know about – at least consider whether you want the jury to know about that?

A. Depending on – you know, I'm not looking to be evasive. Depending on what the nature of the retardation is, I may want to use that in the case in chief. I may want to use that under the mental infirmity. But I would have to know how to use that, having been given that by my [30] professional witnesses. I don't know how mental – using mental retardation as a catchall might be classic ineffectiveness if you could use that in one of the other factors. And I don't know whether you can use that. That's why we hired two psychiatrists and a psychologist.

Q. Okay. So mental retardation could conceivably be a catchall. It could also conceivably add something to the D-2 and D-3 mental health mitigators.

A. It might.

Q. It might?

A. Sure.

Q. If you have evidence that when your client was six years old he scored on standardized I.Q. testing in the mentally retarded rage, is that a piece of information that you think would be helpful to your mental health experts in their assessment of your client?

A. They'd have to tell me. I don't know. I would – if he scored low on a test, I don't know whether they start doing the Reitan Battery test or they do the MMPI test, you know, with 470 questions or whatever it is. I would think that they would – I don't know how many times I can [31] testify to this. I would not make the determination that an Iowa test score is something that would be

needed in the catchall or the mitigating phase element. I wouldn't make that determination. I wouldn't know whether that's important. I would think that the people who you give the charge to do the psychological testing and the MMPI and the Wechsler I.Q. test and the projective tests like the Rorschach test, I think that they would be the one to determine, "Hey, maybe there's something there." I wouldn't do it on my end. If they told me that it's important, I'd go get it. That's why I hired them.

Q. Okay. So your client tells you in your interview with him or you ask your client in your interview, "How did you do in school?" Your client says, "I did fine. Nothing unusual." You go to the family. The family says, "Yeah, he did fine." And you then report to your expert nothing unusual about –

A. No.

Q. Let me finish my question.

A. Okay.

Q. And you report to your expert, "I interviewed my client. He reports nothing unusual [32] about his childhood."

A. The premise is – no. What I say to my expert is, "Here's the file. Here's what my client's charged with. Okay. Here. What do you need from the file? Dr. Sadoff, Dr. Cooke, Dr. Gross, Ron Rompilla's charged with first degree murder. These are the facts. I have a file. Here's the information I have. What do you need from the file?" He tells me. It's put together and sent down to him. "Anything else you need, doctors, let us know. We'll go get." That's how I would do that. I would not give him, "This is what he said about" – I'd let him do the questioning. Maybe Ron Rompilla won't talk to me in the same way

he'll talk to the doctor when the doctor sees him. I would let the doctor handle that. And that's how I did it in ever case that I've seen.

Q. So then what you're saying essentially is that it is not your job to secure records, but it is your job to await your experts' direction to get records. Is that accurate?

A. Yes, having been giving nothing else on the front end from the client or family that would raise an obvious red flare, you know, to us I [33] mean if, there's something there that we know that might be of interest, I mean, if it's obvious – and I don't known [sic] what that would be. But I would most likely say if there was something that stuck out, if Ron Rompilla said, "I was beaten every day by my elementary school teacher for a year," and there are reports to show it, I might say to Dr. Cooke or Dr. Sadoff, "By the way, he told us he was beaten. every day for a year, and I don't know if that factors in. Do you want me to do anything?" If something like. that was on the front end, I might look at it. But hearing, "Everything was fine. It was a normal childhood. I had good things at home. No, there was no problem" – hearing that from his family, no, there's nothing that would make us go say, "Well, geez, just to be sure, let's run down every record on his life." No, I won't do that.

Q. We're not talking about every record in his life. We're talking about –

A. Well, school records. No, there was nothing in this case that would make me go to the school district on the front end. Had Dr. Cooke, as I said before, or Dr. Sadoff or Dr. Gross said, "We need those school records," we'd have gone and [34] gotten them no matter where they were.

Q. Did Ronald in your interviews with him indicate that he had a successful career in school?

A. No.

Q. In fact, he told you he stopped going to school in ninth grade.

A. Something – he might have told Maria that. I don't think he told me anything about when he stopped going to school. He told the group – I think he did – something to that effect.

Q. The defense team?

A. Yes.

Q. He had some indication that he didn't have exactly a, quote, unquote, normal experience in school; right?

A. He didn't finish school, which is not –

Q. He didn't – go ahead.

A. Mr. Wiseman, it's not unusual, dealing with public defender clients, to find public defender clients that didn't get through high school, didn't get through ninth grade, didn't go to college, didn't become doctors.

Q. It's standard that public defender [35] clients often have problems in their lives; right?

A. And they often have problems in school.

Q. Right. So it wasn't as if you knew nothing about Mr. Rompilla's background to maybe make you think about looking into the school records; right? You did know something.

A. I knew that he didn't finish school.

Q. You knew that he didn't finish. And from your experience as a public defender and as a criminal defense attorney you know that people don't finish school for a variety of reasons which can be indicative of problems growing up; right?

A. Yes, they can be.

Q. They can have abusive parents or they could have alcoholic parents.

A. Sure.

Q. They could be stupid; right?

A. Correct.

Q. They could be mentally retarded; right?

A. Correct.

Q. They could have learning disabilities; isn't that right?

A. Correct.

Q. And these are all things that can cause someone not to finish school; isn't that right?

[36] A. Correct.

Q. And yet when Ronald Rompilla told you he only went to ninth grade, you stopped there. You didn't look any further; is that right? You didn't look further.

A. In light of what I've testified to. When we asked him, "What was your childhood like?" "Fine." "Did you have any problems growing up?" The questioning – something to

that effect. "What was your childhood like?" He said it was fine. "What was your relationship like with your parents? Any problems?" He said, "No, everything was fine." Yeah, given what he told us, there was nothing that I thought that required us to get those records.

Q. Did he tell you he was an "A" student?

A. No.

Q. Did he tell you he belonged to extracurricular clubs?

A. No.

Q. Was he on the tennis team or –

A. No.

Q. – the chess club?

A. No.

Q Was he the president of his class?

[37] A. No.

Q. Was he active in student government?

A. No.

Q. Didn't tell you any of that?

A. No.

Q. He gave you no reason to think he was a good student?

A. No. He didn't give me any reason to think he was any kind of anything with school. He just said he didn't finish school and he didn't – I don't think he said it to me,

but the word that I got back was that he went to ninth – has a ninth grade education or tenth grade. I don't even know what grade it was. But he didn't finish high school.

Q. Now, the same kinds of things that might have prevented one of your public defender clients from finishing school might also affect how his siblings do in school, theoretically?

A. I imagine, theoretically.

Q. If you have an abusive parent or there is some sort of alcoholism going on in the home or genetically the family maybe not the brightest family around, that could conceivably affect other siblings in the family; right?

[38] A. It could.

Q. And you knew in this case Ronald Rompilla's older brother was in a reform school at age nine?

A. Correct.

Q. Did that give you any indication of maybe there was something going on in the family that you needed to look for – look at a little bit more closely?

A. No.

Q. That didn't mean anything to you?

A. It didn't give me any indication, with what we had, that there was something else to look for, no. I don't know how many times I can say this. I'll try again. I was waiting to hear from the professionals. I'm not a professional. I would think that they would do the intake and that they would do the testing and that they would come back to us. I didn't make that determination on the front

end. I never did. That's why I hired professional people. So, you know, as many times as you want to ask that, I'm going to respond the same way. In this case, from what he told us, what I did do is I sent him to what I thought are two of the best forensic psychiatrists and [39] psychological – psychologists and psychiatrists in the area. And then I also sent him also to Dr. Gross, who I have an immense amount of respect for. And he practices locally. But no, I did not do it on the front end. And I don't know – I've seen families where one person in the family drops out at ninth grade. Another person in the family becomes a lawyer. There are people where you have siblings where one sibling just doesn't excell [sic] and the other four do or other five do. We had people – family members where there was one, for lack of a better term, black sheep in the family. So the fact that Ron says everything was fine and Nick was in a reformatory didn't tell me this is how I should interpret it psychologically. What it told me was: Get him to the best people and let them handle that end of it and come back and tell me. And that's what I did.

Q. Now, we talked earlier about the responsibility to investigate the guilt and the penalty phase and that those are equal responsibilities.

A. It's all part of the defense.

Q. Okay. When Ron told you, "I didn't do it," and he gave and you a set of facts to support [40] that, you went and had those facts investigated; right?

A. Some of the facts. An alibi we investigate. I mean we looked at the discovery.

Q. You checked his story; right?

A. We checked out his alibi and – yes, we checked his alibi out. Basically that's what he was –

Q. The truth remains then, sir, that when he told you everything was fine at school, you didn't check that out; did you? Did you?

A. You want an answer to that?

Q. Well, I want to know if you did or you did not check it out whether he did well in school. That's a very –

A. Okay. I did not check it out whether he did well in school. But –

Q. My question, sir –

A. Let me answer.

Q. My question, sir, is if you checked it out or you didn't. That's my question. Easy question.

A. I did not check out his school. I checked out his alibi. I felt that – in my mind I can understand, as an attorney, when someone [41] says, "From the hours of three o'clock till 7:00 I was with Butch Lovelace." And if I asked Butch Lovelace, "Was he with you from 3:00 till 7:00?" and Butch says no or says yes, I thought that was something, as an attorney, I can grasp. I didn't need a higher power to explain that to me. So yes, I could check out his alibi and feel that that was something I could understand and interpret. When he tells me, "I did well in school," and I didn't know that – what the meaning of that means, I think that's something that I'm not qualified as an attorney or as a lay person in determining. So I sent him to a psychiatrist or a psychologist. But I understand what an alibi is, having been a defense attorney for at that

time I don't know how many years, and I know how to check out an alibi. It's not that difficult.

Q. Let me ask you this, sir. If you checked out your client's school records and they indicated that he was the valedictorian and it indicated that he was one of the brightest students ever in the class and that one time during his career in school he saved three lives in a fire, all right, and you say to your [42] client – assume those facts – and you say to your client, "What was your your school life like?" He says, "Nothing unusual." Are you saying that you wouldn't feel any obligation or duty to check school records for both good stuff and bad stuff, good stuff that maybe makes your client look better to the jury as well as less flattering things that perhaps could be used in the penalty phase?

A. If he told me that, then I would tell – Dr. Cooke and Dr. Sadoff.

Q. If he told you what?

A. That he saved three lives.

Q. No, he didn't tell you anything. He's telling you, "My school life was nothing special."

A. How did I learn that he did that then?

Q. Well, I'm asking you if your client tells you – let's put it this way. If your client tells you, "My school life is fine," and you learn later all those facts, after the fact, wouldn't you think that maybe you should have gotten school records to see if there was anything good or bad in your client's background to use in the penalty phase?

A. Okay.

[43] MS. PARADIS: Objection.

THE COURT: Sustained.

BY MR. WISEMAN:

Q. Now, you're aware that mental health professionals rely on what's known as collateral data?

A. Yes.

Q. All right. So, in other words, they don't just sit down with the client/patient and do an interview and rely on nothing else.

A. Okay. I mean that – I think that's an unfair generalization. It depends on the professional, and it depends on what you expect the professional to do. When I sent Ron Rompilla to Dr. Cooke, I expected that he would do a MMPI. I expected he would get some kind of a personality profile. I expected that he would do a Reitan Battery test to determine if there was any brain damage. I would expect that he was going to do something to the effect like a Rorschach test, some kind of projective test, and some kind of a Wechsler I.Q. test, something like that that he would do data – he would get data. I expected that Dr. Sadoff and Dr. Cooke would then at some point in time want to see the data or they might [44] call him or they might – and Dr. Sadoff or Gross, I mean, may rely upon that. I expected testing to be done, interviewing to be done, those types of things from those people. That's what I'm sending him down there for. So collateral information – what collateral information they need contemporaneous to doing that kind of testing, yeah, I expect them to get whatever they need. And I also expect them, if they need a school records, to call me and say, "We don't have his school

records. Can you get them for us? They're important." and we go get them. Or he might say that "these school records mean nothing. We don't – it's not important. We found on the Reitan Battery test this, or we found on the MMPI test that he has an odd way of thinking" or he's paranoid or he has wierd [sic] tendencies or this or that. If something came up there and then they said, "Now, is there anything you have that can amplify that?" then I will go through whatever we had. And if, as you're saying, I had it in my hands that he at some point in time was valedictorian of his class and did all of that, I would then turn that over and say, "Does that affect it at all?" But I expected that that [45] decision would be made and those tests will be done by the doctors.

Q. Did you ask Dr. Cooke – do you have a specific recollection of asking Dr. Cooke to do a Reitan Battery?

A. No, I didn't have a specific recollection of – that's what I expected him to do, because that's – my experience with him is that's the kinds of things that he does. That's what's done. I mean, he has done – he's been one of our witnesses on several cases that involved issues involving insanity and mental infirmity, diminished capacity, those types of things. And time after time – I know that he was hired in the case of Commonwealth versus Warren Schaffer, and I know that he did – I believe he did all of those tests. And we had Dr. Sadoff and I think Dr. Gross or one of the other local psychiatrists looking at that. So I know he did that case. I know he had been in a couple of the cases that were in my office. And I know that, you know, that he had perform those, because I think he came up and testified. I think he also did some work in a case that we had originally but we conflicted out that Attorney Makoul did – I think the name [46] was Kroll or something

like that – with a boy who killed his girlfriend. And he had come in and testified in that case, and I watched some of that. So I know that Dr. Cooke had – as part of his package, that those were the types of things that he did. I specifically didn't set up, "These are what you're to do, Dr. Cooke." I think that most of the conversations with Dr. Cooke were between I think he and Attorney Dantos.

Q. So you don't know for sure that he did a Reitan?

A. No, I don't. I didn't say he did a Reitan, only that this – I'm saying those are the types of things that he did.

Q. I'm not arguing with you, sir. I just want to understand what your testimony is.

A. Okay.

Q. So you're not sure that he did a Reitan?

A. No, I'm not sure what he did.

Q. Do you have a recollection of specifically asking him to do one?

A. I didn't talk to him on the front end, Mr. Wiseman.

Q. When I say you, your defense team.

A. Did Maria ask him to do a Reitan [47] Battery? I don't know if she did. Because I was not in the room I don't believe when Maria talked to him about what we wanted. I'm not sure. I'm not sure if she did or she didn't. She might have, I mean, but I don't recall it specifically.

Q. Did you ask any of the doctors how he did on the Reitan if they did one?

A. No. No, I did not.

Q. Did you – do you have a recollection of whether the defense team asked for any neurological or neuropsychological testing to be done on Mr. Rompilla?

A. I don't know what was – I would never have asked for that. It would be – I would have expected it to have been done, and I think so would Maria have expected it to have been done. Because that's the type of stuff that he did, and that's that – we used him before, and those were the things he did in his workup. I don't know whether one test leads to another. I don't know if you do the MMPI first, if you do the Reitan first, if you even do it, if it calls for it. I would figure that would be up to Dr. Cooke or Dr. Gross or – I don't even think Dr. Gross does that. He is the psychiatrist, but I think Dr. [48] Cooke would be the one to do that. That's what our experience had been in the office. I don't know that you have to specifically direct them. I think that, again, you start becoming the psychologist.

Q. Why would you ask or why would you expect a Reitan neuropsychological or neurological test to be done?

A. If it was necessary, I would expect it. If it wasn't, I wouldn't.

Q. What does it test for?

A. It tests for some type of brain damage. I think the Reitan does brain damage. Like I said, I don't know how many times – again, I'm not a psychiatrist or a psychologist. I think that Reitan tests brain damage. How it tests it I don't know, but I think that's what it does.

Q. Why is it important – why is brain damage potentially important on a capital case?

A. Because I think that can be a mitigating factor.

Q. On the catchall as well as –

A. As well as probably one of the other ones.

Q. The mental health mitigators?

[49] A. Sure. But I'm not telling him to to [sic] the Reitan.

Q. There's no question posed at this point.

A. Okay. Sorry.

Q. That's all right.

Now, assume that in a court file kept in this building there is an MMPI on your client that shows him to have scored abnormally high on the schizophrenia scale, that it's a valid test. Is that something that you think your mental health professionals would like to see in doing this evaluation?

A. I don't know. I would think that what they would do is do fresh tests. I'm not sure that – and again, if they had done a test six months earlier or tested the person – if it's in the file because we had the person in 1987, and they did it, and now its 1988, and it was a recent test, fine. Then I might want to say, "Hey, didn't you just do something a year ago?" If they did it umpteen years ago – or how long those tests last for I don't know. I would think that they would test all over again when you send a person in, and I don't know whether they would want that or not.

[50] Q. So you're not sure whether they would want to see historical mental health information on your clien..

A. I don't know what they would want to see. I mean, historical mental health information? I don't know whether a MMPI test, you know, how long – whether that's forever, whether that's at different stage. I don't know. I would expect that the MMPI that he's done in '88 would be the one that I'd want to, you know, rely on.

Q. All right. If, in that same MMPI, it showed that your client scored abnormally high in the paranoia scale, in the hypocondriacal [sic] scale, in the neurotic scale, in the obsessive-compulsive scale, are those bits of information that you think you ought to get to the mental health people so they can have a historical perspective on your client?

A. Again, you're putting the horse in the wrong end here. I would expect the mental health people would obtain that and give that to us.

Q. They go to the court file and pull it for you?

A. No, they conduct an MMPI. That's what [51] I'm paying them to do.

Q. A new MMPI. My question is: Do you think they would benefit from – well, if you're diabetic in 1996, do you think your doctor who sees you might want to know if you were diabetic in 1986?

A. If I was testing –

Q. Sir, it's an easy question.

A. Its not. It's really not. It's a loaded question. The MMPI that I ask for –

Q. I'm asking about diabetes, sir.

THE COURT: Just a minute. Just a minute.

BY MR. WISEMAN:

Q. I'm asking you –

THE COURT: Just a minute. When I'm talking, you stop, Mr. Wiseman.

MR. WISEMAN: I apologize.

THE COURT: I'm getting tired of it.

MR. WISEMAN: I apologize.

THE COURT: Now, we're going to act civilly. We're not going to talk over. You've been talking over Mr. Wiseman. Mr. Wiseman, you've been talking over Mr. Charles. [52] Let's knock it off right now. I'm warning you. All right.

MR. WISEMAN: Very well.

THE WITNESS: I'm sorry, your Honor.

THE COURT: All right.

MR. WISEMAN: May I pose my question?

THE COURT: You may.

BY MR. WISEMAN:

Q. I'm asking you, by analogy, if a medical doctor is seeing a patient in 1996 who has a chronic condition, would that medical doctor want to see records related to that cronic [sic] condition that predates his evaluation by ten years?

A. I don't know. You'd to have ask that medical doctor. And if he said yes, I would get them if I had them.

And if he said no, I'd let him make that decision. I wouldn't – I wouldn't superimpose what I think he might want in a field that I'm not an expert in. So I would let him tell me.

Q. Now, if that same Court file showed your client in 1976 to be reading – I'm sorry, to be in the third percentile in mathematical ability, [53] is that something that you think your expert ought know? If your answer is no, you can just say so.

A. I don't know, Mr. Wiseman. I don't know what my expert wants or needs for any particular test on any set of facts. I don't know, and I don't pretend to know. I don't know if those things are valuable to him or not, even if we had them. I would expect that when you send somebody, he's going to do a current workup. And if a 12-year-old or 20-years-old test is important, he can incorporate it into his current workup. I don't know. I'd let him determine that.

Q. How would your mental health expert in this case know whether the MMPI was done ten years earlier if you don't tell him that it exists?

A. He might talk to the, you know – I don't know that answer. But he might say to the defendant, "Do you see this test that we're giving you? Did you ever take a test like this before? Do you remember whether you took it. Did you ever see – have you ever done anything like this before?" I don't know. Maybe Dr. Cooke can explain that better than I can how he would know. I'm sure that he would be able to develop what he needs to develop on the testing. At least I would [54] think that. And he might be able to determine that or ask, you know, "Were you ever examined for diabetes before? Did you ever take insulin

before? Did you ever take an MMPI? Were you ever in an office like this? Did anyone ever do this with you before?" I would think that a doctor would have an easier time of eliciting that information and get it current than me. And I won't pretend to know what's important or what's not important in the field of psychological professional opinions or psychiatry.

Q. Do you get records about your client's prior convictions in all your criminal cases?

A. Yes.

Q. Do you – well, why would you do that? Why is that important?

A. It's a discoverable rule. I mean, it's a rule in discovery. that they're to provide you with that. And in some cases you may want to know because it may impact your filing some of kind of motion, and in other cases it may have no – absolutely no effect. And in cases where the offenses are 12 or 14 years old, it's probably nothing. It is probably of no value to you except – to argue to the Court that any kind of an attempt [55] to impeach on something 14 years ago is stale.

Q. Do you get your client's prior prison records if he has one?

A. What do you mean by that, "prior prison records"?

Q. If your client's been in prison before, do you try to get their records from the prison to see how he did in prison?

A. No.

Q. In a capital case?

A. No, not unless something stands out, no. There was nothing about his prison records – you mean as to misconducts or something like that?

Q. Well, are you aware that a person's prior prison conduct is a potential mitigating factor according to the United States Supreme Court?

A. I would not go to get his prison record short of something sticking out from something that he told us or something from our interview, no. I would not go, as a matter of fact, and get his prior prison records. And I didn't then, no. If you ask someone, "How are you getting along?" "Fine." "Any misconducts?" "No. I get along fine. It's no problem," then I would just say, [56] "Fine." I'm not – I wouldn't necessarily go and get the extent of the prison records, no.

Q. Now, let's assume that your client in question has scored in the mentally retarded range in I.Q. testing as a child for a period of six consecutive years. Or put it, in other words, from age six to 13 your client has scored in the mentally retarded range. And you sit down with your client and you talk to him. Would your interview of your client be a different one if you knew that on these tests he had scored in the mentally retarded range?

A. I'm not sure if I understand your question, Mr. Wiseman.

Q. If you think your client is mentally retarded because he scored in the mentally retarded range in the past, would you consider your client to be as reliable a historian than if he scored well in that test?

A. If I thought – if I thought he was mentally retarded, I would – you mean, if somebody made a determination and told me this person is mentally retarded?

Q. Right.

A. Okay. So now I'm sure that he is [57] mentally retarded, because an expert or somebody who knows about this told me he is mentally retarded. Would that affect my interview with him?

Q. Right.

A. In what way?

Q. Well, would you take what the client tells you at face value, or would you be more inclined to check it out?

A. It would depend. It would depend on what – the nature of the interview. I think there's different levels of retardation. And so it would depend on what was asked and what was said.

Q. All right. And I think, as you said a number of times, you are not a mental health person – you are not a mental health professional I should say – and you don't feel comfortable making those calls; right?

A. Right.

Q. All right. So you would want to sit across the table from your client and assess his I.Q. and factor that into how good a historian that client might be; right?

A. When you say – you mean when he gives [58] me a fact pattern, if he had a low I.Q., would I not want to rely on what he's telling me because he had a low I.Q.?

Q. Yes.

A. It would depend. I think that, you know, a person with a low I.Q. can tell me what his childhood was like. He might not be able to tell me, you know, something about nuclear physics, but he might be able to tell me about how he felt about his mother and father or his brother. So it may or it may not. I might rely on him a hundred percent even with a low I.Q. When you say he's a historian, it depends on what history he is talking about.

Q. Right. Now, if you say to your client who scores 110 on I.Q. testing, in the genius range, 120 – if you say, "Were you subjected to child abuse?" and the client says, "No, I wasn't," you feel fairly comfortable that that person understands the term "child abuse"; right? In general discussion they know what child abuse is, because they're a genius.

A. I guess. I don't know.

Q. Conversely, if the client has consistently scored in the mentally retarded range [59] and you said, "Were your [sic] abused as a child?" and he says, "No," wouldn't you agree that you might have to look a little deeper and not just take that at face value?

A. It depends. Not absolutely. And those are very extreme levels between being retarded and being genius. Those are very extreme levels. But even at the lower end it would depend, and it would depend on how I felt the person – what the information was. It would depend. I don't think you can answer this the same way every time. It's not a general type of an answer that you can give. It would depend. I might not be able to. I might be able to. It depends.

Q. Are you familiar from your work on the range of I.Q. scores and where the mental retarded range starts roughly?

A. I've never worked on I.Q. scores. I don't know where you got that. I'm not familiar with what – I didn't know 110 was genius, and I don't know what breaks where. It's not an area that I know. And so I've never done work in an I.Q. area. I don't know where you got that from.

Q. I didn't get it from anywhere. I was asking you.

[60] A. Well, you started the question in my work in the I.Q. area I think. So I haven't done that.

Q. I meant in your work in being a criminal defense lawyer.

I want you to take a look at Exhibit 8.

A. Okay.

Q. Exhibit 8 has been admitted as the authenticated records in the possession of the Allentown School Board in regard to Mr. Rompilla. I'd like to direct your attention to the first page of the exhibit. Approximately half way down you'll see an entry that says "9-54, test SRA," and skip over. You see "I.Q." and the column to the right. Do you see that?

A. Yes.

Q. Now, part of that I.Q. number is not visible; is that right? It seems to be obliterated.

A. I don't know. It looks like 60.

Q. Looks like six something; right? You think its 60?

A. Looks like six zero, but it's not obliterated on there.

[61] Q. Really? Maybe it's my copy.

You're right. It's a better copy than I have.

All right. So it says I.Q. 60?

A. Yes.

Q. And that's 9-54?

A. Yes.

Q. And that's when Mr. Rompilla was approximately six years old?

A. Okay.

Q. All right. Now, just assume for these questions that the range for mental retardation is 75 and below.

A. Okay.

Q. All right. So it would appear from this school record that in 1954 at the age of six Mr. Rompilla tested in the retarded range.

A. Okay.

Q. Look at the next entry below that. 4-57, a couple of years later, he tests at 75 in the I.Q.

A. Yes.

Q. Right? Right on the border of the borderline mentally retarded range. Below that, [62] 10-59, you see the entry where he scores 64 on the you I.Q. test?

A. Yes.

Q. Right? That's when he was about ten or 11 years old.

A. Yes.

Q. All right. And right. Below that you see 6-61, you see Stan. Ach., which I'm assuming means – stands for achievement test. And you see the "R" there that he reads on a third grade level when he was about 12 years old? Do you see that?

A. I see the numbers. I mean, if that's what that means. It says R.3.3 S 4.1 and looks like an "L" with a line under it. I mean, whatever that means.

Q. Okay. Now, go down to the next set of entries where is says elementary school and it's got a series of years there. See it says 53 to 54 he was in grade K, and it goes on, grade 1, 2, and 3. Do you see that?

A. Yeah.

Q. All right. And if you look below that, the grades stop getting numbers and it says S-p.

A. Correct.

Q. All right. Are you aware what that [63] entry means, S-p?

A. No.

Q. If I told you that that entry meant Special Ed, would that fact be something that you think your mental health experts ought to be aware of going into their evaluation?

A. I don't know.

Q. All right. By the was [sic], all the I.Q. tests that we just talked about, are those things that you think your mental health experts ought to have been made aware of prior to their evaluation?

A. I don't know. I don't know what my mental health experts need to know or need to be aware of. I don't know. I don't know whether they would need this test or wouldn't need this test. I can't tell you. I would think if they needed it or they wanted to take a look at it, they would call me and say, "We need something else. Get it for us."

Q. All right. Let's just stop there for a moment. Would you agree that your answer implies that they knew of the existence of such testing?

A. No. No. I think my answer implies that if they test him, and he tests in a very, very low record, and they felt it was relevant, they would [64] say, "Geez, he's tested so low. I think it would be important for you get us his school records so we can incorporate that in with our testing." And then I would do that. But I don't think I would make that determination on the front end. I would get it for them when they asked for it.

Q. If you turn the page, about three-quarters of the way down you'll see entry 12-61, again under intelligence testing, and you'll see an I.Q. score of 69. Did you see that?

A. I am on the second page?

Q. Yes, second page.

A. Okay.

A. Where? You know, help me out here. Where am I looking for this? I don't see anything down here. You mean down near bottom?

Q. No, the exhibit – right here.

A. Okay.

A. It says "FS 69."

Q. All right. Under I.Q.

A. Okay.

Q. So your answer, I take it, would be the same?

A. Correct.

Q. That is not something you feel obliged [65] to provide at the front end as you put it?

A. Correct.

Q. Are you aware of environmental factors that can affect one's performance on I.Q. tests that have been in controversy about I.Q. testing, racial bias and cultural biases? Are you aware of that?

A. No.

Q. I am going to show you what's been marked as Exhibit 7.

THE COURT: Maybe, if we're going into a new area, this might be a good time to take a 15-minute brake [sic] for –

MR. WISEMAN: Sure.

THE COURT: – our stenographer and all of us.

MR. NOLAS: Your Honor, would you consider 15 minutes? I have an emergency phone call I want to get out of the way.

THE COURT: Certainly, Mr. Nolas. Be glad to.

All right. We'll be in recess for 15 minutes.

(There was a recess.)

THE COURT: All right, Mr. [66] Charles.

MR. CHARLES: Sorry, your Honor.

THE COURT: That's all right.

MR. CHARLES: There was another matter.

THE COURT: That's all right. All right, Mr. Wiseman.

MR. WISEMAN: Thank you, your Honor.

BY MR. WISEMAN:

Q. Is the exhibit up here?

A. Here. It's Exhibit 7 I think. Looks like No. 7.

Q. Mr. Charles, if you'd look on the exhibit in front of you, No. 7. If you'd turn 5 pages into it.

A. It says "Test Data Summary."

Q. That's right.

A. Okay.

Q. Before I ask you questions, let me just tell you that this exhibit has been admitted as having – it was in the court file related to Mr. Rompilla's rape prior – that was the prior that was read at the penalty phase.

[67] A. Okay.

Q. If you look at Section 2, achievement, do you see "reading score, spelling score, arithmetic"?

A. Yes.

Q. All right. And you see under the spelling score fourth percentile; arithmetic, third percentile?

A. The spelling score, it says three point – the four, is that talking about, at the end?

Q. Right.

A. Four and three, yes.

Q. Now, did you have that information when you were evaluating Mr. Rompilla's penalty phase presentation?

A. No.

Q. Look further down.

A. Well, let me say this. I don't – I did not have it in the file. I don't know if any of the – if Dr. Sadoff, Cooke, or Gross had this and used this in their testing. I did not have this document in the court file in question.

Q. In your file?

A. In my file from '88 in the homicide [68] case.

Q. Well, if I told you that Ms. Dantos testified yesterday that she didn't get this document, and you apparently didn't get it, would you agree that – is there any other way Dr. Sadoff, Dr. Gross, or Dr. Cooke got this document?

A. They didn't get it from us. They might have gotten it from wherever it's origin is. I mean, they might have gotten it from the files. They wouldn't have gotten it from our office, no. This was in an old court file in the courthouse? Most likely if they didn't use it, I would guess they didn't have this. I would think if they needed this, they would call us and say, "There's something in the court file. Get it." But, you know, I would think they didn't have it if this comes from an old court file.

Q. Now, again, not to be argumentative with you, but I guess I'm still not following. How would they know to get this from a court file if they don't know it exists? How would you envision that happening?

A. Well, I mean, I think some of these – I don't know what all of these tests are. But as far as the test evaluations, are these from when [69] he was in prison or are these from –

Q. These are from the 1976 evaluation done when he went into D.O.C. custody on the rape case.

A. They may have asked him, "Have you ever been evaluated or have you ever been tested or have you ever met with a psychiatrist or psychologist before? Had you ever done testing?" You know, "Did you ever do this before or go through this kind of procedure before?" They may have been aware that he was tested on a prior occasion by talking to him. That's one of the ways they might have

found out in their evaluation of him for the 1988 case. And if he remembered being tested and what for, he might have been able to tell them, and then they would have been able to make a determination whether they felt it was relevant or not.

Q. Are you suggesting that Mr. Rompilla would have been able to tell Dr. Cooke that "I took a WRAT"?

A. No. I think he'd be able to tell Dr. Cooke that "I was tested prior to my 1974 case or during it or as part of it. I took various tests." And Dr. Cooke probably could have said, "What kind of tests were they? What questions [70] were asked? What did you do?" And he would probably be able to determine what kind of a test it was I would think.

Q. Now, look down at Section 4, personality. You'll see an initial MMPI.

A. Yes.

Q. And that's the MMPI you spoke of earlier?

A. That is an MMPI.

Q. I'm saying that's the test – not the specific test but the type of test that you mentioned.

A. That's one of the types, yes.

Q. Do you know how to read one of those scales?

A. No.

Q. Now, do you see – looking down the record, it says T-Score.

A. Yes.

Q. It says 90 under S-c.

A. Yes.

Q. All right. If I told you that was the schizophrenia scale and that that score is an abnormally high score, do you think that's something Dr. Cooke and Sadoff and Gross might [71] have wanted?

A. You would to have ask them. I don't know.

MS. PARADIS: Objection. Asked and answered.

A. I don't know.

THE COURT: I think that's been answered.

MR. WISEMAN: I'll move on to something else, your Honor.

THE COURT: All right.

BY MR. WISEMAN:

Q. Exhibit 1 which I'm handing to you is Dr. Gross's report.

A. Do you want this back or –

Q. You can hold onto it if you want.

Why don't you take a minute and read through it, since it's probably been awhile.

A. Okay.

Q. Before we discuss the report, some other thoughts came to mind. You didn't get – or withdrawn. You didn't attempt to secure any medical records that might have existed in the local community related, to Mr. Rompilla; is that [72] right?

A. That's correct.

Q. Now –

A. There's second part. Can I answer that fully? I wasn't aware of any medical records of recent origin in the community since he had been only in the area for a short period. And for 14 years prior to that he was in prison. So, you know, at that point in time, no, I didn't secure them, nor did I think that he had had any kind – he hadn't told us that during the short period of time that he was out that he had had any kind of medical problem. And so, you know, he had been in prison 14 years or maybe even more leading up to that. So no, I did not look at any community areas.

Q. Well, would you agree that medical complications that may have occurred in his life many years back as a child might have some relevance to a mental health provider/evaluator?

A. They would determine that. It might. It might not. I mean, it would be up to – they would determine that, not me.

Q. You'd rely on the mental health provider to make a determination as to whether or not –

[73] A. Correct.

Q. – they were necessary and whether they existed?

A. Whether or not they were – whether or not there was – yes, whether they – even whether they existed, sure, whether or not there was a need for going to a hospital. If the person examining Mr. Rompilla learns during the course of his examination that Mr. Rompilla was in a hospital for this – during this period of time, yes, I would leave it to them to determine what's relevant, to bring that

in in their interviews and their examinations and then to determine whether or not those documents were necessary to help them in an evaluation. I would leave that to the professionals, yes.

Q. So your recollection is that Mr. Rompilla did not disclose to you any hospitalizations – disclose to the defense team any hospitalizations?

A. Correct.

Q. And, therefore, you had no hospitalizations to disclose to your experts?

A. And I don't know that I would be the one to make a determination whether in this case any [74] hospitalization is relevant to what they're testing. I would leave that to the professionals doing the testing.

Q. All right. So the professionals doing testing would make the determination as to whether or not this would be appropriate to get hospital records?

A. If they determined hospital records existed and under what circumstances. If he said, "I stepped on a nail and got a tetanus shot," they might say, "We don't need that." Okay. "How did you do that?" "I was at work." Something like that, they might not determine that's necessary. They might determine it is. I would leave that for them to do the interview, to determine what is there, what isn't there, and what we need to provide them, if anything, to assist the professionals in making their determination.

Q. All right. Look at Page 2 of Dr. Gross's report, the fourth full paragraph.

A. That starts, "There is no" – you mean that?

Q. Right. Look at the next to last sentence.

A. "He has never been in the hospital"?

[75] Q. Right.

A. Okay.

Q. All right. So that you didn't report any hospitalizations to the doctor, and presumably from this Mr. Rompilla didn't report a hospitalization?

A. I never did. I assumed from this that that's one of the types of questions that the professionals would ask. And if Mr. Rompilla said, "Yes, I had this or I had that," they would then say, "Hey, let's try and get it." Or "Let's call the P.D.'s Office and say there's some documents we need you to obtain for us so I can go further."

Q. And again, we discussed earlier, that is relying on Mr. Rompilla to be an accurate, reliable historian of prior hospitalizations.

A. Or if some test that they conduct shows that something's there. I mean, again, I don't know how many times I can tell you. It's not totally – I don't think totally relying on what comes out of his mouth. Some of their indicators or pointers may come from how he tests.

Q. Okay.

A. I don't know.

[76] Q. Dr. Gross makes a statement, an assertion in his report, that he has never been in the hospital.

A. Correct.

Q. That's all we are talking about right now. Okay. And my question is: He didn't get information from you to the contrary. Apparently he didn't get information from Mr. Rompilla to the contrary. Is not Dr. Gross's assertion, therefore, relying on Mr. Rompilla's accuracy in his description of "I've never been in a hospital"?

A. You'd have to ask Dr. Gross. I don't know what he relied on, and I would not venture a guess as to that. You'd have to ask Dr. Gross.

Q. Would you agree that there is a component of whether or not the reporter of the information is reliable if he's retarded, for example? Is that something that maybe you'd evaluate the accuracy of his statement, "I've never been in a hospital"?

A. Again, I don't know. You'd have to ask the doctor.

Q. All right.

A. I don't know what he relies on or what [77] he doesn't.

Q. What if a hospitalization took place when the person was two years old, and the doctor doesn't get the information from you? Are you suggesting that he would have to then get it from the client who was two at the time of the hospitalization?

A. I'm not suggesting he had to do anything. If the hospitalization took place, I don't – again, I don't know if there's a test or one of the questions or the testing shows something that would lead the doctor to have a question and that the doctor may talk to Mr. Rompilla or to the patient. He may call the family. He may call me and ask something further if something – if a red flag goes up

through the testing procedure. I don't know. I don't know if it's relevant. And, obviously, I don't know whether a two-year-old's hospitalization would evidence itself through the result of some test somewhere that would lead him to believe, "Hey, this person must have suffered something along the way. Go get all his medical records." That's what we left for the professionals to tell. I don't know. And how he would get them, if he felt [78] something was there to be explored, he wouldn't have to solely rely on Mr. Rompilla. He could call the Public Defender's Office and say, "There's something else to be explored. We think it's relevant. I think I need it for my testing. Go look for it." But that – and I don't know how many times I can answer that. But I'll continue to for each question. That's how we would do it. I wouldn't expect him to do anything. I would assist him in any way he wanted us to assist him and don't know if that two-year-old's hospitalization is relevant or not. That's why I'm hiring him.

Q. Dr. Gross obviously – well, withdrawn. Dr. Gross included an entry in his report that there has been no hospitalization; is that right?

A. That's correct.

Q. In your experience with Dr. Gross, does he put extraneous, unimportant material in his report or does he put germane things in the report?

A. He puts germane things in. He's put things in his reports that aren't germane. He does his reports; and his reports are his reports. Sometimes what's in his report I find to be or [79] found to be germane. Sometimes he's put things in his reports that I haven't liked on cases. Not every single sentence of every report that he's given me or my office was what I wanted to hear or was germane to

what I was looking for. It was germane to what to [sic] he felt was germane.

Q. Okay. But by "germane" I mean relevant to a mental health evaluation, not relevant to helping or hurting your case.

A. You know, like I said, the report is germane to – not every line is right on the money I guess. I don't know. I would imagine the doctor – if you're asking me if the doctor's report answers the question and does what you asked him to as far as doing the evaluation, yes. He does not hand out reports with superfluous, you know, matters being contained just to lengthen the report.

Q. All right. So you would agree then that making a notation about hospitalizations is something that the doctor did because it's germane to the overall evaluation?

A. It may very well be.

Q. Now, Exhibit 9 is a composite exhibit which has two hospitalizations from Mr. Rompilla. [80] I'm directing your attention to the one of his hospitalizations at the age of two. And if you look down midway at the page, you'll see a notation of a fever of 105 degrees in the hospitalization at some period in the case.

A. Yes, I see it.

Q. So just so the record's clear, have you ever seen this document?

A. No.

Q. Did your office – did anyone affiliated with the defense team to your knowledge provide this document to Dr. Gross?

A. I don't believe so, no.

Q. Does it appear then from the facts before you now, Dr. Gross's report and your knowledge of the hospitalization – does it appear to you that there's an inaccuracy in the report because of the fact Mr. Rompilla had been in the hospital as a child with that condition?

A. Let me see. Well, you know, what I say is Dr. Gross says he has never been in the hospital, and there's a report that he was in the hospital. So –

Q. So the report's wrong on that fact?

A. Whatever that is is whatever that is.

[81] Q. The report is wrong on that fact; isn't it?

A. I imagine. It appears to be. I mean, again, I don't know. I don't know – ultimately it probably is wrong, but I don't know why Dr. Gross said he's never been in the hospital. He could tell you that. If this is accurate, then what Dr. Gross has in his report is incorrect. If it's accurate. And I don't know why he put that in then.

Q. Now on the next line it says that he denied any head injuries.

A. Yes.

Q. Do you recall in your dealings with Mr. Rompilla seeing any prominent scaring on his head?

A. No.

Q. You never saw the scar above his left eye and right above his right eye?

A. If I did – I might have. I don't know whether or not he was scarred. I might have seen it. I don't know. I don't remember today whether he was scarred or not.

Q. Is that something that, in preparing your capital cases, you routinely do look for or don't look for?

[82] A. I would not look for that. The scarring – it depends. I mean, in his case I wouldn't look for it. I imagine that the professionals that look at him would look at it, want to know how it got there. But I wouldn't ask him. It might have been from a fight. I mean, you're not talking about somebody who is coming in out of, you know, a very nonviolent background as far as prison. He's in Graterford State Prison for 14 years. You know, that may very well have been something that he got there. I don't know. I didn't ask him. I don't know if – it was nothing that I remember; but if it was that visible, I would think, to the extent that that's relevant, that professionals would have noticed it and asked about it.

Q. Do you have any recollection of asking Mr. Rompilla how he got scars?

A. No.

Q. Did you ask anyone in his family or anyone who knew him how he got scars?

A. No. No.

Q. Did you ask any of the mental health providers to explore that with him?

A. No, I did not.

[83] Q. Now, leaving aside how he got it, would you agree that – well, withdrawn.

When you said he may have gotten it in a fight, the point remains, does it not, that however he got it if he had a blow to the head which resulted in his scar, that's something the mental health professionals would maybe be interested in exploring?

A. I don't know. I have scars. I mean, I have scars on my face. I don't know what that's indicative of. Okay. I know people with scars. I don't know what a scar over the eye or in the chin means. I have one myself. I don't know what that means about me. Okay. I would not determine what implication a scar over the eye or a scar – especially from someone who spent 14 years in Graterford Prison and has been – you know, which is a rough area to begin with – I wouldn't know what it presents and if it had any kind of import or whether it was a lead-in to a line of testing. I would leave that, obviously, to the professionals that examined him. And, obviously, when they examine him face to face they see his face. And I would leave it to them.

MR. WISEMAN: All right. Just [84] so the record is clear, your Honor – and I guess Mr. Charles maybe can't see – the one scar is down over the eye. It's actually in – sort of above, going into hairline area.

MS. PARADIS: Your Honor, at this point I'm objecting; because the scars, first of all, weren't apparent – if they were even in existence at the time, they're not apparent to Mr. Charles. And there is no evidence at this time that those scars were apparent at that time.

THE COURT: All right.

MS. PARADIS: They're here today.

I assume they're here today or you wouldn't be testifying about it.

THE COURT: I guess I'm not sure what – go ahead.

MR. WISEMAN: I would have an offer at this time. I'd like to introduce a one-page entry from Mr. Rompilla's Department of Corrections records from 11-8-88. These were records we obained [sic] from the Department of Corrections. And among other information, this entry notes a scar above the left eye. I'd ask to have that marked.

[85] MS. PARADIS: That was an admission after this trial. The scar – 11-88 was after he was convicted of the murder. So that doesn't tell us anything about when it got there or –

MR. WISEMAN: Your Honor, the entry is six days after the imposition of sentence in this case. The record may bear that out.

Can we have that marked?

(Defendant's Exhibit No. 12 was marked for identification.)

THE COURT: All right. It's been marked, Mr. Wiseman.

MR. WISEMAN: Thank you, your Honor.

BY MR. WISEMAN:

Q. Now, in the report Dr. Gross says Mr. Rompilla denies any head injury.

A. Correct.

Q. So would you take it from that entry in the report that that was based on a self-report? In other words, he, Mr. Rompilla, denies a head injury.

A. I don't know, Mr. Wiseman. I don't know where or why Dr. Gross placed that there. I don't [86] take it. I don't know. I would suggest you cross-examine him. I don't know why he placed it in.

Q. I didn't ask why he placed it in. My question is: The statement, quote, "He denies any head injury," unquote, does that appear to your eyes, as a reader – as a professional reader of this report, that that's based on a self-report from Mr. Rompilla, that Mr. Rompilla denied a head injury?

A. No, it doesn't. It would – what it implies to me is that at the termination of the testing done by or the evaluation done by Dr. Gross he determined, from whatever he did, that there were no head injuries. Okay. I don't know what he did. It might have been alone just from a discussion. I don't know what he did to make that determination. What it implies to me is that was his professional conclusion, to a reasonable degree of medical certainty, there were no head injuries. That's what it implies to me.

Q. I [sic] appears to be wrong. Would you agree?

A. I don't know that a scar is indicative of a head injury. I don't know that it means you've had a head injury because you have a scar. [87] There's a lot of different ways to get a scar. Are your talking about a shock trauma type of an jury? A laceration? You can have a scar over your eye playing a basketball game and taking an elbow. That doesn't necessarily mean it's indicative of a head injury. It

means that there's a scar there. So no, I don't know that it's indicative of a head injury or that that's inconsistent or contradictory.

Q. Now, obviously, there are ways one can get a scar on the head. You can cut yourself with a knife. You can get an elbow to the head. You can have a blow more serious than that. But you'd agree that any of those three ways of getting a scar is an injury; wouldn't you?

A. It's an injury.

Q. And it's an injury to the head; isn't it?

A. It's an – I guess you could say it's an injury to the head, the head area. I don't know. A scar over my eye, is that a head injury? You can call it that. I don't know.

Q. All right.

A. I've had scars over both my eyes from playing basketball. I didn't consider them head [88] injuries. Maybe somebody else would. I don't. I've had lacerations that I don't think involve a great deal of trauma or for which I did not go to the hospital and receive anything more than maybe a tetanus shot. At injury to the area of my body, yes. So if that's what a head injury is, fine. If that's a head injury in psychological or psychiatric terms, I can't tell you. A doctor would have to tell you that.

Q. All right. And you just said that you wouldn't consider a blow – withdrawn. You wouldn't consider a scar obtained in a basketball game to be an injury to – a head injury, whereas someone else might.

A. It might and – it might be a head injury, depending on the level of the force and the result. It depends. You can have a scar that involves a head injury. You can have a scar – an elbow in a basketball game that can kill you. But you can also have one that cuts your skin without doing much more than some minor swelling. And it may not be something where a professional would determine it to be a head injury. I don't know. That's a loose term, and I'm taking it in the term that Dr. Gross gave it.

[89] Q. How do you know what term Dr. Gross gave it?

A. Head injury to me means head injury. I don't think he had –

Q. How do you know how Dr. Gross –

A. I don't.

Q. You don't know how Dr. Gross –

A. I don't know. I'm just reading it off the paper. However Dr. Gross gave it, that's how he wrote it. I don't know what he meant by that.

Q. Now, would you agree then that, given the subjective nature of the reporting of the head injury as you just said, one person might consider something a head injury where another person wouldn't, wouldn't you agree then that, given the subjective nature, relying on Mr. Rompilla's apparent statement that he denies a head injury, that that again is relying on Mr. Rompilla to be an accurate reporter and historian of his life?

A. No.

MS. PARADIS: Objection.

THE COURT: Sustained. This is ludicrous, honestly ludicrous. Dr. Gross is the only one – I mean, Mr. Charles has indicated it. We went through this yesterday. I mean, what [90] Dr. Gross meant by "head injury" is for one person to tell you. That's Dr. Gross. That's it. Now, how can Mr. Charles or anyone else make that determination? Now, I mean, this is ludicrous.

MR. WISEMAN: Well, your Honor, just to beg the Court's indulgence here. I understand –

THE COURT: Certainly.

MR. WISEMAN: My point –

THE COURT: I have given you a lot of on this, but go ahead.

MR. WISEMAN: My point, your Honor, and the point of this line of questioning is that, obviously, Mr. Charles and the defense team relied upon Mr. Rompilla as an accurate reporter of his life. And I am simply trying to show that, in at least a few areas, that proved to lead to inaccurate conclusions on the part of the doctor.

THE COURT: Lead to what?

MR. WISEMAN: Inaccurate conclusions.

THE COURT: How can you make that – that's what I'm saying. How can you make that leap when you don't know what Dr. Gross meant [91] by "head injury"?

MR. WISEMAN: Well, we know what he meant by hospitalizations.

THE COURT: And you've gone over that. I didn't say –

MR. WISEMAN: It's a similar point, and it's –

THE COURT: It's not a similar point. A hospitalization is a hospitalization. There you have a record, and no one – there's no objection to that, and you went through that. This is a totally different situation. And it's ludicrous, I mean, unless you have some proof of what Dr. Gross meant by that.

MR. WISEMAN: Well, Dr, Gross will be a witness.

THE COURT: Well, then let him make that determination.

MR. WISEMAN: Your Honor, again, just so the Court understands where were's [sic] going, it's not a one-person operation, an evaluation of a client in a capital case. It's an evaluation that is based on what a lawyer does and what the mental health professional does. And one part in isolation the law says is not what the [92] Court needs to look at. You need to look at everything.

THE COURT: Okay. I agree, and I understand that.

MR. WISEMAN: That's where we are going.

BY MR. WISEMAN:

Q. Did you ask Dr. Gross what he meant by anything in his report? Did you sit down and go over it with him?

A. I didn't talk to Dr. Gross, no.

Q. Do you know if Miss Dantos went over the report with him?

A. I'm sure she did. But you're going to have to ask her. I believe she did. I believe she spoke to each of the professionals that we went to; and I believe, from the results of Dr. Gross, we actually contacted Dr. Sadoff for further investigation. So I think she talked to Dr. Gross. And I know Dr. Gross does some forensic work. But Dr. Sadoff being what I consider the pre-eminent forensic psychiatrist probably in the country, we went to him, and I think – you know, again, I believe that Maria talked to Dr. Gross and that, as a result, we then [93] went to Dr. Sadoff. That's my best recollection, Mr. Wiseman.

Q. In your experience as a criminal defense lawyer are you aware of alcohol consumption being a possible cause of organic brain damage?

A. Yes.

Q. And that can happen? You've seen cases where that happens?

A. I'm aware of it, you know, in a general sense. Obviously, I don't know that it's particularly related to any one case. It's kind of a general knowledge that I believe that alcoholism can cause brain damage, yes.

Q. Okay. Now, did Mr. Rompilla tell you he was an alcoholic?

A. No.

Q. And by "you" I mean the defense team.

A. Not that I know of. No, he never told me that, and I don't believe he told Attorney Dantos that.

Q. So he denied alcohol being the major problem or a problem at all in his life?

A. He didn't deny it. He didn't say it. I don't know – I mean, it's not like we said, "Hey, Mr. Rompilla, we have a feeling that alcohol is a [94] major problem in your life," and he said, "No, I deny that." He never mentioned it. He never brought it up.

Q. Did you or Miss Dantos ask him if he drank a lot?

A. Maria may have. I think that John Whispell may have talked to him. But he was very – he was very much into being like a health freak. I mean, he was telling us – I knew while I was over in the prison that he lifted weights, and he was bench pressing some incredible amount of weight. And I think they even were going to get more weights over there so they could accommodate him. I know he was a physical fitness person, and I know he was very proud of the fact that he was in good shape. I think he used the terms – I think that it's reported somewhere that he's proud of his body and he respected his body and he takes care of it. So no, I don't believe he ever told us that he had problems with alcohol. And I don't think that he told us that, having been out a month or whatever after 14 years in Graterford, that he was suffering from alcohol use while he was in Graterford. So I think that the answer is no, he didn't bring that up to us. To [95] the contrary, he was a physical fitness person. He kept himself in good shape, and it was very obvious he was in great shape back at that time. I'm not saying he is not now. But he was working out every day, and he told us about that he was running a little bit and doing regular workouts. And he told me that. He told John Whispell that. he told Maria that. In fact, John Whispell; who is deceased, was also very much of a physical fitness nut, if I could use that term loosely, and I think they had conversations about that. That was one of the ways John and Ron had common

grounds, and he was comfortable talking to John, because I think they talked a lot about things like working out.

Q. Okay. Now, Dr. Gross saw Mr. Rompilla in June, June 4th of '88. His report is undated, but that's the indication in the report is that he saw him on June 4th, '88. And would you look at the last two paragraphs and tell me what you think they mean, what your interpretation of them is.

Let me withdraw the question. I'll ask a different question.

Why don't you read the paragraphs.

[96] A. I'll read them.

Q. Okay.

A. The first one being "in my opinion"?

Q. I am going to ask you a different question, but –

THE COURT: No, he was just checking which two.

A. Which two did you want?

BY MR. WISEMAN:

Q. I'm sorry, the last two on page –

A. Including "my recommendation" being the last one?

Q. Yes.

A. I've read those.

Q. Would you agree that the statement, "My recommendation is that this area should be further evaluated,"

in your view is that relating to the alcohol – violence while under the influence of alcohol referred to in the paragraph above?

MS. PARADIS: Again, this is objected to. Dr. Gross's statement is something that speaks for itself, and only Dr. Gross can tell us what he meant by that.

MR. WISEMAN: What I was going to say, your Honor is that counsel's [97] interpretation of that and what action he may or may not have taken based on that is what I am looking for.

THE COURT: I'll permit it.

A. I can answer that.

I'm not sure that he was talking about alcohol. The way I interpreted that was – you know, you have to understand that we're giving Ron's case to Dr. Gross for something, okay, to see if he can have something to help us anywhere along our case. I read that to mean – he says here there's a strong element of antisocial behavior, but "there is no other evidence at this point in my evaluation for underlying psychiatric or mental disorder." There's a possibility that he may become violent when he's prone to alcohol, which I think is a general statement, because I think they would say that – there's been testimony that, you know, high levels of alcohol consumption and violence may have some correlation. So that could be a general statement there. I think what he was talking about in the last sentence was, "If you're looking for some kind of evidence that's going to help you in your case, you should get further [98] evaluation, because I can't help you." That's how I read that. "This area" meaning his antisocial behavior.

Q. You think he was telling you to further explor [sic] antisocial behavior?

A. No, get him further evaluated I thought. What I figured this means is, like he said, "In my opinion there is certainly a strong element of antisocial behavior, but there's no other evidence at this point in my evaluation for underlying psychiatric or mental disorder." Okay. And so, I mean, I take it to mean there's nothing in that for what he has. Explore that further. Because he doesn't have a yes for us that there's – he doesn't have something that we can use. "If you wish to move on, you should get further" – he can't find anything. You know, get another opinion.

Q. Okay. So he's talking about antisocial behavior, and he's talking about this alcohol aspect. In your view, is that – when he says "this area," he's referring to one or both?

THE COURT: He didn't say that. That wasn't what he said.

MR. WISEMAN: I'm asking.

[99] THE COURT: That's not fair. Now, listen. You know, that's just a mischaracterization of what he just said.

MR. WISEMAN: Maybe I –

THE COURT: It's a total mischaracterization of what Mr. Charles just said. And, you know, the questions aren't testimony, but I don't like counsel totally misrepresenting. I mean, Mr. Charles just got finished an answer. His answer was diametrically opposed to what you then put in the question saying, "That's what you just said." It wasn't what he just said. Now, maybe you didn't want to

hear that, but he didn't say that. Now, please, you know, let's proceed in a proper way. Listen to what he answers, and then go on.

Restate your question if want to be in the area.

BY MR. WISEMAN:

Q. Exhibits 1 and 2 are the letters you received respectively – I'm sorry, make that Exhibits 2 and 3 are exhibits you received from Dr. Sadoff and Dr. Cooke in regards to their evaluation.

A. Yes.

[100] Q. Now, the dates on those indicate – what are the dates that each doctor evaluated Mr. Rompilla?

A. Dr. Cooke evaluated Mr. Rompilla, according, to this letter on Monday, June 18t... Dr. Sadoff did an evaluation on September 15th of 1988.

Q. Between the time that you received Doctor Gross's undated report and the time that Dr. Cooke did his evaluation, did you do anything to further the recommendation Dr. Gross makes in his report?

MS. PARADIS: Objection. Asked and answered. Mr. Charles already testified yes, he did. He went and elicited the help of Cooke and Sadoff.

THE COURT: That's what I thought. But go ahead.

BY MR. WISEMAN:

Q. Aside from eliciting the examinations of Cooke and Sadoff, did you do anything else to further explore the recommendation of Dr. Gross?

A. No, I don't believe so. I mean, we worked the case as far as the case in chief. But as far as Dr. Gross's recommendation, no. I [101] believe I – we secured Dr. Cooke and then Dr. Sadoff. And Dr. Sadoff is not somebody that you can call on a Monday and get him to do something two days later. He has quite a backlog. He lectures out of the country. He's traveled all over the world. And so you really are kind of stuck with his schedule. And we got Dr. Sadoff as soon as we could so that he could make arrangements to see Ron. And I assume that this was the earliests [sic] that he could see him due to his schedule that summer.

Q. Do you know whether Dr. Cooke had Dr. Gross's report when he did his evaluation?

A. I don't know if he did or he didn't. He might have. I don't know.

Q. And do you know if Dr. Sadoff had the report?

A. I don't know. I'm sure that Attorney Dantos would have told Dr. Cooke that Mr. Rompilla was examined by Dr. Gross. But given the fact that – the relationship with Dr. Cooke and Dr. Sadoff, I'm not sure whether they would call for that report or not. Dr. Cooke may very well have wanted to give him his own set of – his own examination. So I don't really know.

[102] MR. WISEMAN: If I could have a moment, your Honor.

THE COURT: Certainly.

MR. WISEMAN: I'm just looking to see if I left any questions out, your Honor. I think I'm about done.

THE COURT: Certainly. That's all right.

MR. WISEMAN: I have nothing further. Thank you.

THE COURT: All right. Ms. Paradis.

MS. PARADIS: Just a few questions, your Honor.

THE COURT: Ms. Paradis.

CROSS-EXAMINATION

BY MS. PARADIS:

Q. Mr. Charles, Mr. Wiseman asked you whether or not you were aware that the case law allows you to present to a death penalty jury the prison record of the individual for whom they are judging whether they should live or die.

A. Yes, he did.

Q. And you indicated that, yes, you're [103] familiar – you're aware of that; isn't that correct?

A. Sure.

Q. Would you have wanted this jury in the Ronald Rompilla case to have learned that your client had earned numerous misconducts, that he was placed according to his – because he was so aggressive, that he cared little for anything but own his own immediate gratification, that the likelihood of his rehabilitation was not good? Would you have wanted your jury to hear those things about your client?

A. No. And I certainly wouldn't want the fact that the likelihood for any rehabilitation was not good. No, I would not want that there. I believe, if I recall, one of the

best lines of questioning that I think really impacted on the jury is when Maria Dantos talked to Ron's brother. And Ron's brother – and then on cross-examination he was crossed about the fact that Ron was in prison so long. And he said, you know, he's been left in prison, and he gave some testimony that I thought got the jury to at least be a little sympathetic, and it was something that we talked about drawing on when Maria and I talked about [104] that. "Geez, they may have been touched a little bit by seeing the brother stand up and say, you know, he's been punished in prison. I don't remember the exact line of testimony, but I thought that that was very significant. But no, I would not want what his prison record was, given what you've read, to go to a jury, not on this case,

Q. Would you consider those things about your client to be any kind of mitigation?

A. No.

Q. You and Miss Dantos, the defense team, had the opportunity to interact with Mr. Rompilla's family over the course of the pendency of the criminal charges; isn't that correct?

A. Yes.

Q. And your relationship I believe with that family was a good one; isn't that correct?

A. I thought it was.

Q. They were a constant source of information for you?

A. Yes.

Q. And you felt free to ask them for any information that would be helpful in helping to defend their brother?

[105] A. Yes.

Q. Or – their brother I guess.

A. Yes.

Q. Yes. In fact, did you ever receive any correspondence from any of the family members who spoke for the family?

A. His wife sent us a letter I think the day after the verdict came in or two days later. She sent a letter to Maria and to me.

Q. What is her name?

A. Sandra Whitby.

MS. PARADIS: I gave a copy of that letter to Mr. Wiseman.

(Commonwealth's Exhibit No. 2 was marked for identification.)

MS. PARADIS: Your Honor, may I approach the witness?

THE COURT: You may.

MR. WISEMAN: Your Honor, is this being offered in evidence or –

MS. PARADIS: I'm just showing it to the witness at this point.

MR. WISEMAN: Can I ask the relevance of the line of questioning about a letter that was sent after the trial?

[106] THE COURT: I don't know if it was after the trial or – I wasn't clear if it was after the guilty part or the sentencing.

THE WITNESS: The day after the sentencing to death. It was like a day later. The trial was over.

THE COURT: Including the sentence?

THE WITNESS: Yes. The trial was over, I believe, when that came.

THE COURT: All right.

MS. PARADIS: Your Honor, the reason I'm offering it is because I believe that it reflects the relationship that the family had with the defense team during the entire process as well as the relationship that the defense team had with the defendant, so much so that any kind of information that should have been brought out and wasn't brought out you'd have to question why based on this letter, based on their feelings toward this defense team.

THE COURT: All right.

MR. NOLAS: Your Honor, so we're clear, that's a letter from Mr. Rompilla's wife. It's not a letter cosigned by several [107] family members. It's not a letter from parents, siblings. It's a letter from the person's wife thanking counsel for the representation. To that extent – I mean, my view is the relevance is limited to that extent. That's what it is.

THE COURT: In other words, it would be limited and should be limited, if at all – and I don't know whether you're objecting or not – to the position of the ex-wife of Mr. Rompilla and no one else.

MS. PARADIS: No, actually she speaks for the family in the letter.

THE COURT: All right.

MS. PARADIS: She speaks for the family in the letter.

THE COURT: Is there an objection?

MR. NOLAS: Not to identifying it, your Honor.

THE COURT: All right. Fine.

BY MS. PARADIS:

Q. Mr. Charles, would you please identify that.

A. This is the letter that was sent to Maria Dantos from Sandra Whitby.

[108] Q. Is there any indication that you were to be a recipient of that, as well?

A. Yes. It's from – Maria showed it to me. This is a copy. I think the original Maria made a copy for me because she thought I would appreciate seeing it.

Q. And is this a letter that you kept as part of the case file?

A. Yes.

Q. Okay. Would you please read that letter to the Court.

A. "Dear Maria. It is the next day, and the pain and word "death" is still alive in my mind, but I had to take the time and write and tell Fred and you what supurb human beings you both are. You fought and felt everything our family did, and when we cried you cried along with us. You left a feeling in me I can't explain, and I want to thank you both for caring and for being there with us all the way. I'm sure I speak for all my family.

"I only hope that some day, as Fred promised, the word "death" can be erased from the sentence so we can live in peace that Ron will be there to write, visit, and talk with. If he [109] should die, a part of us will, too, cause in our hearts we feel he is innocent, and nothing will change that.

"Maria, I know at this point you want to put this matter aside and get on with your work, but I hope you don't give up on Ron, cause he called me and said you woke up feelings in him, and he trusts you with all his heart. We both know that was hard for him to say.

"I can't say it enough that Fred and you are both wonderful, caring people. Thank you again for everything, and please, please help us, and don't forget us.

"Love, Sandra Whitby."

Q. Okay. Mr. Charles, do you feel that that letter represents the type of relationship that you had with the family members?

A. Yes. You had to see Maria Dantos with Ron's son. When I think of this, it's a memory that I'll never forget. Because his son was sitting on the windowsill listening to the radio during the death penalty phase and waiting for, I

guess, the radio reports to come in and give status updates on the case. And Maria asked him, "What are you doing?" and he is saying, "I'm [110] waiting to listen to the radio to see if they're going to kill my dad." And she sat with him, and I know the family was there, and when we heard that, it gagged her. It gagged me. And I can remember her continuously, I mean, if anything. And it was just a sight. We felt for everybody, because this was just difficult all the way around. And to see her handle the family, talk to Nick, talk to the other people who were there, worrying about how Ron's son was doing, yet trying to keep some of the torture of those proceedings – I mean, two days on the guilt phase and then two more days on the death penalty phase, and seeing the effect it had on the family I think had a very strong effect on both of us. And I know she was always moving around trying to make sure, let's see how this person's doing. It was amazing. And like I said, she had a sensitivity for them that I think was drawn out and brought forth during the course of the proceedings, during the course of the whole case, and it really came out while we were going through the closing phase and the deliberation. I thought it was – this letter is very much indicative, and I think that the real – that it should probable [sic] take my name [111] off of it. I think it was really meant for her; and as a sidelight, because I was there, she showed it to me and put my name in. But this is really more of a testimonial to the relationship she had with the family, meaning Maria with the family, and how much she cared and how hard she worked for them.

Q. Okay. And yet never did any one of those family members tell you about any abusive childhood that Ronald Rompilla suffered; did they?

A. No, they never did.

Q. And never confided in you or in response to your questions told you about any problems that he had in his childhood?

A. Never.

Q. Okay. It's fair to say that these siblings of Ronald Rompilla, despite the fact that their brother was on trial for this heinous crime, were still loving and supportive?

A. Absolutely.

Q. All right. And you looked to those siblings to get a feel for the type of relationship this family had; is that correct?

A. Yes, we did; but I think it was more so Maria did than me.

[112] Q. All right.

A. But I talked to them. I knew Nick, and I talked to Nick. And I liked his other brother. I forget what his name was, but I liked him, and I thought he would be a good witness. But I think the person who really did that more than me was Maria.

Q. But what you saw was a lot of love and support?

A. Yes. Yes.

Q. You didn't see indications of a dysfunctional family who had no respect for each other?

A. I wouldn't know what a dysfunctional indication is, you know, again, but I didn't see anybody with any disrespect. I saw a lot of people on our floor that I thought cared very much for Ron, were worried about him, and were there to do – and were going to stay with him and

going to stay there every minute. And even when we said, "Go ahead. We'll let you know," no, they had to be there. They were in the Public Defender's Office and outside the entire time. Almost like a vigil. And it was – I remember the scene, because it was very, very sad. And you had the [113] other family, the Scanlon family, all together also on a different floor. And there you have two families, you know, just fretting and worrying and going through this scenario while we are waiting for the jury to come back with their verdict.

Q. Okay. Thank you. At any time during your interaction with Mr. Rompilla did he give any indications to you that he had any kind of mental impairment?

A. No.

Q. Did he appear to be mentally retarded?

A. No. If – again, I don't know. I don't know that. I wouldn't know, you know, levels of it. He didn't appear to be mentally retarded to me.

Q. Did he have any problem understanding you, expressing his feelings –

A. No.

Q. – telling you things? Anything like that?

A. No.

Q. Mr. Wiseman asked you if you would want your mental health experts to know about some childhood I.Q. test that indicated that he may or may not be borderline mentally retarded. Assuming [114] your experts did ask you for information like that, would you also feel compelled to tell them that at the age of 27 his I.Q. tested at 93?

MR. NOLAS: On a different test, your Honor.

MS. PARADIS: On an I.Q. test.

THE COURT: On a different I.Q. test.

A. I don't know if I felt compelled on the other one. I mean, if they asked me and I had it?

BY MS. PARADIS:

Q. If they asked you for those tests and you had the information and if they felt it was necessary.

A. I would get it for them, yes.

Q. Would you also want them to know that he also tested at age 27 with a 93 I.Q.?

A. I would give them the test and let them make their decision. The same way – either way I wouldn't know whether or not a 93 is important or not any more than a 75. If they wanted the test, I'd get them the test. And I'd let them decide what's important on it and what's not important on it.

Q. Okay. Let me get back – just a couple [115] questions about some questions that were asked of you yesterday regarding your strategy in the death penalty phase in terms of telling the jury that your client played a minimal role. First of all, you already indicated that you submitted a point for charge which was denied on the minimal role.

A. Yes.

Q. All right. Did you have any evidence at all that your client played any role in this? Strike that. Did you

have any evidence from your client or that was part of the defense that your client played any role in this murder?

A. He said he didn't. No evidence that he did. I mean, there was the forensic evidence. There was the evidence testified to that his foot was – you know, the footprint and the fingerprint on the blade. There was no evidence from my client that he had anything to do with the homicide, no.

Q. Nothing at all?

A. Nothing.

Q. Would this have contradicted your entire defense to argue to a jury that he played a minimal role?

A. That he played a minimal role, yes, [116] because our defense was that he played no role in it. Okay. So a minimal role would then have been contradictory, because we were arguing that he didn't have anything to do with the killing.

Q. And as a seasoned defense attorney who has practiced in front of many juries, as you already testified, what strategical advantage or disadvantage would you see in presenting to a jury a totally inconsistent defense at the sentencing phase than what you presented at the trial?

A. My strategy is inconsistent defenses result in convictions. That's what happens. I said it yesterday that you walk out with your hat in your hand. Maybe I should be more clear. If you argue, "He didn't do it. But if he did do it, it was this, and if he didn't do it, it was also that," the end result is inconsistent defenses in my experience result in convictions or in whatever you're going for you're going to lose. And my feeling on this case, you turn around

and you argue to the jury he had nothing to do with it, as Maria did so expertly and said, "You don't know for sure that he did this, so you cannot kill him," that was as good as we could do with the facts. To turn around at that point, after [117] already having the impact when the D.A. gets up and says, "Now, I couldn't tell you this during the case in chief, but I can tell you now. Mr. Rompilla has a prior record. Mr. Rompilla was convicted of rape. Mr. Rompilla was in Graterford up till two months before this. Mr. Rompilla" – when they started – when the D.A. started to do that on the death penalty phase, you could look and see the jury looking at us and looking at us as if we had very much misled them. And you could see that people that you had eye contact with and maybe smiles with or you had their attention during the case in chief, you didn't have it anymore. They looked at you. You could tell by body language. You could tell by facial looks that that alone lost – that alone lost a great deal of whatever credibility we had going into that closing. Okay. And I'll never forget that, because it's kind of like you took – the district attorney one by one told them, "He has a prior record." He was guilty of a rape – an [sic] I think he even said a rape with a knife – and that he's been in prison and all these things, and now he had money. There was testimony that he was spending money all over the place. Yet there – [118] if you brought it up that he was in prison up until right before, then where would the money come from if not from perhaps being there? I mean, it really – you see your whole defense start to come apart, you know, after you're already on the death penalty phase. And what you have to do as a strategy is try and recoup it somehow with a jury that has already rejected your arguments on the guilt phase. And so to then add to that an inconsistent defense and to try and tell them, "Hey, okay, you know, we told you before he

had nothing to do with it, but he did, but it wasn't that much, it was a minimal part," I thought strategy wise was dangerous and inappropriate. Okay. And I thought that the way Maria Dantos handled it and the way we agreed to handle it was in closing. Obviously somebody somewhere had a question about it or they wouldn't have asked the question. And that's where you are going to have to concentrate and hit that on the closing while appealing to for mercy.

Q. Okay. The jury had heard, prior to closing – prior to you putting on your case in chief at the penalty phase, they had already heard the details of his prior rape and burglary. Was [119] there anything about that that confirmed your decision not to proceed with an inconsistent defense?

A. Yes.

Q. Why?

A. The facts of that rape case were just unbelievably on parallel with this case. You have in our case – in the case we had before this homicide took place the Commonwealth put on testimony from a waitress that Ron Rompilla had at closing time had been hiding behind a juke box and that when she uncovered him he said something like, "Boo, the boogyman's here," and he laughed. And she was – she was upset or something. But that he was hiding there. And the D.A. made the argument that that night had he not – this was the standard M.O. She caught him a little too early or what could have happened to her. That was the argument that Mr. Moyer made, the D.A. at that time. He brought those facts up. Then you got into the – and that was even brought up – I believe that testimony came in during the case in chief, but I could be wrong. You

have – the rape case is a bar. Mr. Rompilla is in the bar. Then he goes into the men's room. And in our case [120] there was testimony from, I believe, a Richard Davis that Ron Rompilla right before closing was in doing something with the window in the lavatory. Now, in the Joe's case, the rape case, he's in Joe's bar in the lavatory right before closing. He's in the bar, according to the testimony that's read. The bar closes, and now all of a sudden he pounces upon the victim. There's a knife involved. And that's read to the jury. He slices her with the knife, that type of thing. Those facts and the reading of that transcript also were of such a parallel, I don't think that they were going to hear anything concerning minimal role after hearing that testimony. I think we lost most of them as soon as they heard about his prior record and as soon as they heard about that, you know, "we weren't allowed to tell you till now, but now we're going to tell you these things." When the D.A. did that, I think most of them were gone there. And then the rape case – the rape testimony obviously was harmful. But I still think, in my opinion, as soon as they heard about his prior record and they started piecing things – because Mr. Moyer said in his closing, "He's throwing money around like a [121] drunken sailor," and I objected to that. And then – but where does he get this money from? And I could see that the jury – it wouldn't make that much sense to them then. But now he's in the prison until right before. Where is he getting the $250, $300 to be buying drinks for everybody? The case came together for the D.A. more on the death penalty phase than it ever came on the case in chief, and that was a result of some of the factors that are implicit in the system where you can now go into the prior record and the prior circumstances. So we lost that jury I believe as soon as Mr. Moyer started going into the "what I couldn't tell you

before, but now I can tell you." The rape testimony didn't help, and it was a very similar M.O. to this case. And I think to argue a minimal role would have insulted them beyond belief and lost any chance to appeal to their mercy.

MS. PARADIS: Thank you, Mr. Charles. I have no further questions.

THE COURT: Mr. Wiseman.

MR. WISEMAN: Just a few to follow-up.

THE COURT: All right.

[122] REDIRECT EXAMINATION

BY MR. WISEMAN:

Q. Mr. Charles, did you – did the defense team to your knowledge speak of Mr. Rompilla's father?

A. I don't know if she did or she didn't. I don't know.

Q. Do you know if the defense team spoke to all of Mr. Rompilla's siblings or some of his siblings?

A. I don't know how many siblings he has or who was available. I know we spoke to Nick. We spoke to his sister-in-law. We spoke to his brother.

Q. That would be Darlene?

A. I'm not sure of the name of his sister-in-law. He had a younger brother. I don't know if Nick's an older brother. Nick, the younger brother, and the sister-in-law and his ex-wife or his wife. I don't know if she was ex or current at the time. I think ex-wife.

Q. The last answer you gave to the District Attorney about the penalty phase, as we talked about earlier, you knew the rape transcript was going to be – the D.A. was going to attempt to [123] get the rape transcript before the jury; is that right?

A. Correct.

Q. Okay. The impact that that would have had potentially on the jury didn't come as a surprise to you; right?

A. Well, I mean, the impact – the fact that it had a negative impact wasn't a surprise. But you had to be there. As the D.A. was reading that testimony and recounting the evidence of the rape, I believe that Mr. Rompilla had a look on his face – and I mentioned it to Miss Dantos and to John Whispell – almost like he was reminiscing. And I tried to get him to look down at his paper, and he just sat there looking up into the roof like he was recalling events. It was an erie [sic] sight. I saw the jurors looking at him, and I tried to stop him from doing that. So I could anticipate the reading of the rape testimony to be harmful. I had no way to anticipate the facts as they actually came that Mr. Rompilla would affect jury the way I think he did during that reading.

Q. All right. In your October 14th, '88, plea letter you essentially tell Mr. Rompilla he [124] has a pretty good chance he's going to get the death penalty.

A. I think we said that there's an overwhelming chance, if want my words.

Q. So you knew going in this was going to be a very tough penalty phase if you got to it.

A. Yes.

Q. And that was based, in part, on the rape transcript and other factors, as well?

A. It was based, in part, on the gruesome nature of this murder, on what happened to Mr. Scanlon, on the facts that were here, on 16 stab wounds, three knife wounds that reached the heart from the back, a knife breaking off in two places. There was evidence that he was then lit on fire, because there were charred materials found. So there was evidence of a fire being lit. I thought, notwithstanding whether the rape case got in or didn't get in, there was a good shot of – given the fact that there is a violent history, that there are – certainly the argument could be made that Mr. Rompilla killed Mr. Scanlon to keep him from being a witness in a burglary or robbery case, and I felt that – I felt that there was a great shot that he'd get the death penalty [125] irrespective of whether we could keep those rape transcripts out. I met with my appellate counsel going into the jury selection, and we reviewed what we would have to do to keep them out. We did that at about the same time I wrote that letter, which was leading into when the trial started. The trial actually – we were assembled October 17th. And so that was – we had decided that we were going to try and keep those transcripts out by the way I talked to you about yesterday. But there was no question that – even had the transcripts been kept out of this case, that I thought then as I'm thinking now, there was an overwhelming possibility he would get death given the gruesome nature of the facts of this case and given Mr. Rompilla's prior history and propensity for violence.

MR. WISEMAN: Nothing further.

THE COURT: All right. Anything further?

MS. PARADIS: Thank you. I have nothing further, your Honor.

THE COURT: Thank you, Mr. Charles.

THE WITNESS: Thank you, [126] Judge.

THE COURT: All right. We'll be in recess till 1:15. All right.

MR. WISEMAN: Your Honor, off the record?

THE COURT: Certainly.

(There was a discussion off the record.)

THE COURT: We'll be in recess till 1:15.

MR. NOLAS: Thank you, your Honor.

(An adjournment was taken to 1:15 p.m.)

AFTERNOON SESSION

THE COURT: My apologies, counsel. I had something I had to get done in those 15 minutes.

All right, Mr. Wiseman.

MR. WISEMAN: Sure, your Honor.

Randi Rompilla, please.

[127] RANDI ROMPILLA

was called as a witness and, having been duly sworn, was examined and testified as follows:

THE COURT: You may be seated, ma'am.

DIRECT EXAMINATION

BY MR. WISEMAN:

Q. Miss Rompilla, do you know Ronald Rompilla?

A. Yes.

Q. And what is your relationship with him?

A. He's my brother.

Q. And what's the age difference between the two of you?

A. I'm 44, and he'll be 48. Four years.

Q. And there were other siblings in your family, both older and younger than you?

A. Yes.

Q. Where were you in line?

A. Second youngest.

Q. Now, when you were growing up, could you tell the Court what your family was like?

A. It was abusive. The boys got beat up. We got beaten with belts and brooms. We weren't loved. They didn't buy us clothes. We got [128] clothes from the Rescue Mission. We didn't have no parties, no birthdays. My dad bought a couple gifts for Christmas. But the boys, if they didn't do their duties, in the dog pen. They got – Ronald and Richard got locked in there until my dad left them out, which was a couple hours.

Q. Let me just stop you and ask you a couple of questions about what you just said. Did either of your parents drink at all?

A. Yes, they both drank.

Q. Could you describe for the Court whether they were what you call a social drinker or did they drink to intoxication or something in between?

A. No, they drank till they were drunk. My mom, from the – that was her breakfast. She drank till night-time, because my dad beat her, you know, and he cheated on her. And it was just a very abusive family.

Q. Now, when you say your dad beat her up, could you describe to the Court what you mean by that?

A. Smacked her around. Punched her in the face. She stuck up for herself. She was drunk. She stabbed him in front of us.

[129] Q. When you say "in front of us," the beatings that your father administered to your mother did he do that off in private or did he do it –

A. No, in front of us.

Q. "In front of us" meaning who?

A. Meaning Ronald, my sister Nikki lived there, myself, and my younger brother. All the other older kids ran away or they left home to get married to get away from that. So what we witnessed was our abuse.

Q. Did your father ever lift his hand to any of the children in the family?

A. Yes. I got the broom broken over my back. And Ronald, he got beaten with belts when they came home. He just was drunk, and he just beat him.

Q. Were the beatings – with what frequency did the beatings occur?

A. A lot. There was no love in our family. None. You didn't get a hug. You didn't get "good night." You didn't get a "happy birthday." You got nothing. You just had to do what he said. And if you didn't do it, you got beaten. And my mom over the years drinking, and she was abused by [130] my dad, she just – we were deprived of a mother. We weren't loved. And I blame my father. I hate him. And I wish we would have had a better life so my brothers could have had like a father figure and a mother figure. I didn't have, either, and they didn't. And we were deprived. We didn't get any counseling. We didn't get any help. And when the schools – when we went to school and they said that there was something wrong, we should have, you know, someone talk to us because we went to school being abused, my dad would lie and say, "Nothing happened. Nothing's wrong." So to this day I can honestly say I didn't get any help. I mean, I have the nightmares still.

Q. What are your nightmares about?

A. When the boys got beaten, I used to climb the walls and just scream get me out of here. And to this day I do have the same nightmares, and my husband has to hold me down until it subsides, because I'll never forget it.

Q. Now, when you say that there was no affection, did your mom and your dad ever say nice thing [sic] to you or your brothers and sisters?

A. No. We were stupid. We'll never amount to nothing. The boys, they wanted just a car to [131] work on. I mean, just something to do. No, they couldn't have that. I mean, my dad didn't take them fishing, baseball games, nothing. We couldn't have friends come in like girlfriends and that and invite them into our home. It was school, come home, and nothing else. There was no phone calls. If anybody called us up, it was, "Hang up." We couldn't go to, you know, games, school games or anything. There was just no outside connection with anybody.

Q. Now, when you just said, "We were stupid. We would never amount to anything" –

A. He will say that to this day to us.

Q. If I could just ask the question, ma'am, so the record's clear. When you were saying that, were you saying that those were things that your mom and dad would say to you guys?

A. Yes.

Q. So those were words spoken to the children by the parents?

A. Yes.

Q. Was it more your mother or your father?

A. Father.

Q. Did your mom say those kinds of things, as well?

[132] A. Yes.

Q. You mentioned early on when you began speaking about a dog cage. Can you tell the Court what that's about?

A. We just – on South Fifth Street we had like a dog pen. It was like a wire mesh. And we had two dogs from his brother that he gave my dad. If the boys didn't clean it, which they didn't, he would like lock Richard and Ronald in it, and then he'd just go back in the house. And you couldn't stand in it. You had to be hunched in it. It was big enough that you could walk in and that and clean it, but they were like hunched over or kneeling until my dad left them out.

Q. Was this in the house or outside the house?

A. No, outside in the yard.

Q. When you say it had to be cleaned –

A. Well, the mess, the dog mess. And I mean, you know, it was filthy. I mean, it wasn't nothing nice.

Q. When you say your father would lock them in it, how did he do that?

A. Well, he had one of those big locks and – you know, like a padlock, and he just [133] locked them in until he came out to get them out.

Q. And do you remember how long he'd leave Ronald and your other brother –

A. A couple hours.

Q. And where would he be while they were in there?

A. In the house drinking or doing whatever he did.

Q. Do you have any recollection of Ron or your other brother crying out when they were in there?

A. After they got beaten?

Q. No, no. When they were in the dog cage, did they cry out, yell, or say, "Dad, get me out of here"?

A. No.

Q. They just sat there?

A. They just – you had to follow my dad's rules. If you didn't follow – you couldn't go up against my dad.

Q. Now, you mentioned that you and your siblings, Ron included, would be – were beaten with belts, and I think you mentioned a broom handle. Did your dad use anything else on you that you can recall?

[134] A. No.

Q. What did your mom use? Withdrawn. Did your mom hit you, as, well?

A. Yes, but she just used her hand or fist. It was nothing with a belt or nothing like that.

Q. What was your grandfather like?

A. Oh, grandfather was an evil man. I think – well, my – I think that's why my dad was the way he was.

Q. That was your father's father?

A. Yes. I mean, my mom took care of him. He lost his both legs. I mean, he wouldn't even go to the funeral for his father. He wouldn't take care of him or anything.

Q. When you say he was evil, could you describe –

A. He was very strict with my father. He wasn't loving. He was cold-hearted. And that's exactly how my dad was.

Q. Did he, meaning the grandfather, spend time in your house?

A. Yeah, but I wouldn't go near him. We were afraid of him. He would like – just like be nasty with his voice. And, I don't know, you just couldn't satisfy him.

[135] Q. Where did Ronald have his bedroom in your house?

A. Well, my dad wouldn't give us a bedroom door. He told his brother Rudy to take all the doors off, that we didn't need any doors. And he made Ronald sleep up in the attic. And there was no heat up there. But that was his bedroom. And then if we had to change or something, we'd just like go behind the dresser. Because my dad didn't want to give us any privacy.

Q. Did he ever tell you why he was doing that?

A. Yeah. He didn't want us to have any privacy. He didn't – you know, he just wanted to watch us. He'd go in our drawers. I mean, he was a strange father. He didn't even have a bedroom door on his bedroom. I mean, we could walk by. He was lying there. He didn't care.

Q. Now, you talked about quarrels that your mom and dad had when you were growing up. I think you said something about your mom stabbing your dad?

A. Yes.

Q. Tell the Court what that was.

A. She stabbed him in the leg because he [136] had the gall to park behind our backyard on Fifth Street with Mary, his girlfriend, in the car, and she seen them there. And when he came into the house, she just picked up the

knife and stabbed him in the leg. But, see, my dad was the type of man that, when he cheated on her, he'd come home and brag about it.

Q. Who was Mary?

A. Mary Pletz, his girlfriend.

Q. And did he introduce her as such to friends?

A. Yes, sure. We – well, no, he didn't tell us right way [sic] that was his girlfriend. We didn't even know. He took us over in the afternoons to go play with her kids, and then later we found out that was his girlfriend and her kids. And then instead of us getting the money for the clothes and what we needed for school supplies, he would give it to her kids. And then he had enough gall to tell my mom. And over the years, yeah, I hated him for it, because I knew her kids.

Q. How did it make you feel when you were a child seeing your dad ultimately with this other woman?

[137] A. I used to go with my mom. She used to drag me bar to bar looking for my dad with Mary. And when she used to catch them, she used to attack her and my father. So I can very well say I hate my dad because of what he did to my mom.

Q. How did it make you feel when you were a kid when your dad would hit you?

A. I hated him. I still hate him to this day. He didn't change. I hate him for the fact he – my brother died, Richard. He wouldn't bury him. He wouldn't go see him. They had to drag him up there to see him for the last time. No, I hate my father.

Q. How did it make you feel when you saw your dad hit other children in the family?

A. I was very upset. I told you I had nightmares. I screamed. They had to hold me down when I was a kid. No, I was terrible.

Q. Did you ever feel humiliated or embarrassed?

A. Oh, it was always over the years going to school – I had to go to school knowing that I was beaten at home and then go to school the next day and look at kids with nice clothes, and I had rags.

[138] THE COURT: Do you want to take a break?

THE WITNESS: I'm all right.

THE COURT: There's tissues there, if you'd like, right next to you, if you'd like to – right up here.

THE WITNESS: Oh.

THE COURT: There's water there, too.

THE WITNESS: I'm sorry.

THE COURT: That's all right.

BY MR. WISEMAN:

Q. Tell me when you're ready.

A. No, I'm all right.

Q. Did you ever get locked in the cage, the dog cage?

A. No, no.

Q. Did your dad treat you differently than the way he treated the boys in the family?

A. No. He always said I was like the boys. He hated me like he hated his sons, because I was the only daughter really that – I seen the abuse and the beatings and that, and I would like more like – I don't know. Like how can I explain it? I would stand up to him more. I would maybe open [139] my mouth on something he was hitting me for, and then he didn't like it. So I got hit harder. Where the other sister would just shut her mouth, take the beating, and not question nothing. So, you know, he didn't care for me.

Q. Was there – directing your attention to an incident regarding a paycheck, do you recall that?

A. Yeah. When we – well, we dropped out of school, because we didn't get clothes. I didn't get clothes or supplies. He wouldn't even pay for my cap and gown. So I just like wouldn't go to school and eventually got my mom to sign me out of school. But I got a job, and I got modern clothes. And the rule was, "If you live in my house, you give me your paycheck, and I will give you enough money that I feel fit." So he used to take my check, give me $25, and I had to live on that until next payday. So if you didn't give him the check, well then, you know, you were like beaten. I mean the dollar to my dad was – even when my mom was working she couldn't keep no money in her purse. He wanted all the money, and he would spend it the way he – like on his gambling. He played cards heavily. He drank. He spent it [140] on Mary. He bought her a diamond ring. He gave money to her kids throughout the years. So, really, we were deprived. He didn't put no money in the bank and say, "When you grow up, you can

go to college." No. You were stupid, and you weren't going to be anything. And over the years he said that to the boys over and over again. Then he used to take me and Ronnie and circle around Camp Hill and tell Ronald, "If you don't behave, this is where I'm putting you." And so over the years when we had to do that, when he took us, how could – how could he grow up to be anything like for a father to be proud of when that's all my dad was was abusive with kids? He didn't love us. It was like threats and beatings. We just didn't have a chance, and we had nobody to really go to. And that's how it was, really, in our life.

Q. Did your dad ever choke you or any of the other children?

A. Oh, that's because I wouldn't go to school because he wouldn't give me clothes and that, and he just choked me and said, you know, "Oh, I could kill you for not listening to me." But it was just part of his abusive ways. Now, [141] I'm not saying he would have, but – and then I ran up to my girlfriend's house, and I wanted to stay with her, and which I did for a while. And then he just sent my mom up, and then she smacked me around to bring me home. And I still wouldn't leave that night. But eventually I did go home, but I just ran away a lot. I ran away a lot.

Q. How much older are you than your younger brother?

A. I'm 44. Maybe about six years.

Q. Do you remember when your mom was pregnant with your younger brother?

A. Uh-huh. Yes. I was jealous.

Q. Do you recall whether or not she drank while she was pregnant with your younger brother?

A. Yes. She always drank, always.

Mr. McINTYRE: Your Honor, just for the record, can we have the name of the younger brother?

THE COURT: That's what I was wondering, too.

MR. WISEMAN: I was just about to get to it, your Honor.

BY MR. WISEMAN:

Q. Who is your younger brother?

[142] A. Robert Rompilla.

Q. Now, did you ever talk to the lawyers who represented your brother Ron at the time of the murder trial?

A. No. Nobody approached me or called me, no.

Q. No one? None of the lawyers did?

A. Nobody.

Q. Did you attend – well, where where [sic] you living at the time of the trial?

A. Where I'm living now, 713 South Filmore, Allentown.

Q. Did you attend the trial at all?

A. Yes.

Q. Did you sit off alone, or were you sitting with the rest of your family who may have been here?

A. I was on the side of the brother of the deceased – the son of the deceased. They had us all together.

Q. Now, had you been asked back at the time of the trial or before the trial about the kinds of things you talked about here today, would you have been willing to talk about them back then?

A. Yes. But nobody approached me or asked [143] me or called me.

Q. Just a few more questions, ma'am. Did your grandfather drink when he was at your house? Did you ever see him drinking?

A. No. When my grandfather was at our house, he had his legs taken off. I mean, no –

Q. You said he had his legs taken off?

A. If he drank when my dad was growing up, I couldn't tell you that.

Q. You testified that your father would say things to you and your siblings, Ron included, that you're stupid, you're dumb, you'll never amount to anything. Was that something he'd say once in a blue moon or something he'd say frequently?

A. No, he was always saying it to us.

Q. It was a constant?

A. When we went to school, he would not – neither parent would sit down – if we had trouble with a subject, they wouldn't go over anything. It was like, I don't know, we just didn't have any support in that. We were there just to watch them drink and abuse us. We just didn't have no

– I couldn't even tell you an event, like we all went out as a family and we enjoyed ourselves. We [144] didn't have that kind of lifestyle. We were more secluded. When you came home from school, you stayed in or you were allowed in the backyard. You couldn't bring friends and that. There were many times I had a girlfriend at school I wanted to bring there, but I wasn't allowed. I was invited to their birthday parties and wasn't allowed. I mean, we just didn't have that lifestyle when we were growing up.

Q. When your father would beat Ronald, do you recall if he hit him in particular parts of his body?

A. He just swung with that big leather strap. He didn't care if he hit your back, your head – he didn't care.

Q. So he hit all over?

A. I mean, he was drunk half of the time. And when he wasn't drunk, he still swung. He did not care. I mean, he just did what he wanted to do.

Q. When he would hit, though, would some of the blows land on Ronald's head? Did some of the blows land on Ronald's head?

A. I even got hit in the head a couple of times, yes. My dad was very abusive. He didn't [145] care where he hit. Years ago it wasn't like you talked about it or anything. It was more like if you had abuse in your home, you didn't want nobody to know. You didn't – there wasn't stuff like today. If there was, my dad would be in jail.

Q. When Ronald was beaten by your father, how did he react? Did he stand and take it? Did he try to run away?

A. No, we all tried to run away. And Ronald tried to, you know, get away from the blows and that, but he just cried. We all cried. We cried, we screamed, and he didn't care. He just did what he wanted.

MR. WISEMAN: All right. Thank you, ma'am. I have nothing further, your Honor.

THE COURT: All right. Mr. McIntyre.

MR. McINTYRE: I have some questions. Thank you, your Honor.

[146] CROSS-EXAMINATION

BY MR. McINTYRE:

Q. Good afternoon, ma'am. My name is Mike McIntyre. I'm with the Lehigh County District Attorney's Office.

A. Uh-huh.

Q. All right. Just let me ask you a few questions. Are you parents alive?

A. My mom passed away about just approximately say eight years ago. But my dad's living.

Q. Where is he living?

A. With his girlfriend on over the south side.

Q. All right. Here in Allentown?

A. Yeah.

Q. All right. Is there any contact between him and any of your brothers and sisters?

A. No. He won't – he don't have no contact. The only contact he has is with with my sister Sandy. Because he's like – he can't hardly walk. I mean, he has like a handicap, and he needs someone in charge of his stuff when he – you know, if anything happens to him. But no, not close, no.

[147] Q. I take it he's not very mobile? He can't get out of where he's living?

A. No, he drives. He goes to the horse track and that. But I'm saying he does it with a cane and half crawling. I mean, he has a crippling disease.

Q. All right. Neither you or your brothers and sisters go to see him, though?

A. I seen him like maybe a couple months ago. Well, last night he called to scream at me, because he didn't want me to come here. And I just like stood up for myself and said good-by, and he hung up.

Q. So that there is contact between –

A. Only that he called me up and said don't come up here today.

Q. Well, before that didn't you say – there was the phone call last night. Didn't you say that you visited him recently?

A. No. I said I talk to him once in a while because my sister tells us that he's not well. "What if something would happen to him?" So I call him once in a while. But, no, I don't sit up there. I don't take my dad anywhere. No, she does all that.

[148] Q. All right. Let me see if I can make this clear. Have you visited your father, let's say, in the last year? Have you gone to visit him?

A. Yeah, I went up already like with my sister Sandy, because he can't write. So with his papers and that. But I mean I don't sit there. And you can't sit there and discuss your life. Like he's not going to sit there and say, "Oh, how are you today?" And, "what's up?" He doesn't want to hear about how you are or what your life is. It's just, you know, if he talks, it's about, "Oh, I need this filled out," or, oh, this and that. It's not what – it's not like a family. It's – I don't know how to describe it. There's no love there.

Q. All right. Try to answer the question. I think the question to you was: Have you visited him in the last year?

A. Just to fill out his papers.

Q. How many times would you say you visited him in the last year?

A. Three.

Q. Three. And how about your brothers and sisters? Do they visit him?

[149] A. No. They don't go up at all.

Q. Nick does not. Okay. That's one.

A. Barbara, no.

Q. All right. Barbara, no. What about Darlene?

A. No no, no. My dad don't like Darlene.

Q. All right. Sandy does, though, right?

A. I said she's in charge of all his important papers and that. Yes, he needs somebody, and he picked her.

Q. Okay. And just so that I'm straight on this, were there originally nine children?

A. Yes.

Q. Did one die?

A. Yes.

Q. All right. Who was that? Was that Rick?

A. Richard.

Q. All right. So there's eight children living. Do they live in this area?

A. Uh-huh.

Q. Everybody?

A. Well, no. Paula, she's in Colorado. She went back to Colorado.

Q. Okay. How many of those children were [150] in this area at the time of the defendant's trial back in 1988?

A. Everyone but one, Paula.

Q. All right. So everyone but Paula was here at the time?

A. Uh-huh.

Q. It's fair to say, isn't it, that everyone knew that the defendant was going on trial in 1988? Isn't that true?

A. Well, yeah. By the papers and the T.V., yes.

Q. All right. Well, was there discussion between the family members?

A. About what?

Q. As to what they should do. Well, let me lay some background here.

Do I understand from your direct that your dad treated everyone the same?

A. Yes.

Q. All right. He didn't have a favorite?

A. Oh, my younger brother. My younger brother never got beaten, no. He got everything. If he wanted T.V., he got T.V. Stereo, he got it. Money, he got it. But to this day he will not bother with my father.

[151] Q. Would that be Robert?

A. Yes.

Q. All right. So other than Robert, everyone else was treated the same?

A. No. My sister Barbara, she had it pretty well.

Q. All right. Other than Robert and Barbara, was everyone else treated the same?

A. He did not hit Barbara. My mom hit Barbara.

Q. Robert and Barbara. Was everyone else treated the same?

A. The same.

Q. All right. Do I assume correctly that because of the treatment that you all got, it kind of made you unified, like you grew closer together because –

A. No, were not close together. We weren't brought up to be close together. We were more brought up to be far apart. How can we be close together when we never did nothing as a family together? No, we didn't bond, no.

Q. So I'm incorrect. Because of the treatment you got from your parents, the children did not –

[152] A. We weren't connected.

Q. – were not close at all?

A. No.

Q. All right. Back in 1988 at the time of the defendant's trial were you seeing your brothers and sisters, though, at that time?

A. No. Well, yeah, we were here. But I mean as far as visiting them and going places, no. It was more like we were apart. We live our own lives. It's not the kind of lifestyle like other people have, no.

Q. All right. Did you get together to talk about the fact that your brother was standing trial for murder?

A. No.

Q. That's the defendant.

A. No.

Q. Never spoke to one of your brothers or sisters about that?

A. When we were up here at the trial, yes. But I'm saying we did not – it wasn't like, "Oh, I'm going to call my sister Sandy and talk about my brother." No. We kept more to ourselves what we felt, and we just stayed in our own homes. It's so hard to describe.

[153] Q. Do I understand correctly that you did talk about it but while you were here, quote, at the trial, unquote?

A. Here. Right.

Q. All right.

A. Like when we were into the – for coffee or something.

Q. All right. And who did you discuss this with? Which brothers and sisters were at the trial?

A. Well, Nick was with me, Sandy, Darlene, and myself.

Q. What about Robert?

A. Robert – he did come, but I don't know what part of it he came. But, no, he was here.

Q. All right. And you had discussions with him; isn't that right?

A. Discussions? What do you mean "discussions"? See, I don't understand what you mean "discussions." What did we discuss?

Q. Just tell me if you don't understand the words.

A. I don't understand that. Because we didn't discuss nothing. We were just so heartbroken that this was happening.

[154] Q. Did you speak with Robert?

A. I don't understand.

Q. Do you understand the word "speak"?

A. Yes, I understand "speak." But what are you talking about? What did I say to Robert? We were all – we were all heartbroken about what was happening to my brother. I mean it wasn't like we were sitting around saying, oh, like I think this, I think that. It wasn't like that. It was devastating. I mean, it was something like you see on T.V. You just couldn't believe it. I mean, yeah, we said, oh, it was, you know, like from our bringing up and my dad's abuse and this and that. But, I mean, we didn't, you know, say what if he really did it or anything. I mean, it was just so devastating. And to this day it's devastating. I mean, I carry it in my heart. And I look at him, and it hurts.

Q. Did I understand that you just said that you did discuss the abuse with your brothers and sisters at the time of the trial?

A. No. We said, with him getting in trouble over the years when he was young, could it have been because he got beaten and that? Not – yes, he got beaten. He didn't – we don't know to [155] this day. I'll go in my grave, and I don't know if he did it. Because it's too devastating.

MR. McINTYRE: Your Honor, could I have the witness cautioned to answer the questions that are posed to her?

THE COURT: Well, I think she's –

THE WITNESS: I'm sorry.

THE COURT: I think she's trying to.

THE WITNESS: I'm sorry.

THE COURT: All right.

A. I'm not trying to avoid you. I'm not –

BY MR. McINTYRE:

Q. I think my question to you, ma'am, was: Didn't I hear you just say about – now it's about five minutes ago, that you discussed this abuse, the fact that you had been abused by your parents, at your brother the defendant's trial?

A. No. Because you're taking it wrong. No.

Q. You didn't say that? I misunderstood what you said?

A. You're taking it wrong. You're saying that we said because of his abuse, oh, he did it. [156] No, we did not talk like that. We talked about how we were brought up with no love, no nothing. He was always in trouble because of my father. He was beaten. He wasn't loved. He got nothing. And if he wanted something, "No, you're not getting it." None of us had anything. I'm sorry. But – I don't mean to be rude or anything. It's just that you don't understand what I'm saying.

Q. Are you finished?

A. Yeah.

Q. Who decided which of the brothers and sisters would testify for the defendant?

MR. WISEMAN: Objection, your Honor. I don't know how she would know that, if she knows.

THE WITNESS: No, I can answer that.

THE COURT: If she knows.

A. Nobody – and this is no lie. Nobody – we were not as a close family that we would meet with my sister or somebody and they would say this one would testify or this one. No, we were not even speaking to so-and-so at the time. We were all like apart. And nobody approached me to say, "Would you testify for your brother?" They didn't [157] ask me about our childhood. Nobody – because I live at the same place as I lived when the trial was going on. And nobody approached me. I'm sorry. So, no, we did not discuss who was going to talk. I wasn't even in that discussion if there was a discussion. I just knew my brother was on trial. I came to the trial. I sat with Sandy, Darlene, my brother Nick, and that's all. There was nothing more to it than that.

Q. And your testimony is that at no time did you, Sandy, Nick, Darlene or Robert decide which of you should testify?

A. No. No, we did not decide.

Q. So you have no idea how Nick, Darlene, and Robert were chosen to testify?

A. Well, maybe they were asked. But nobody asked me. And nobody told me that, you know – I guess they were asked.

Q. You were present for their testimony; weren't you?

A. Yes.

Q. All right. You heard what your two brothers and sisters had to say; right?

A. Yeah.

Q. All right. You knew that you could also [158] testify if you wanted to?

A. Nobody asked me to.

Q. Please answer the question.

A. No. But what I'm saying is nobody –

Q. I didn't ask you if someone asked you to.

A. No, you said, "You could have." No, I couldn't have, because they didn't take my deposition – that I didn't have no papers on me like now. No, I couldn't stand up and say to the judge, "Oh, can I go up and speak for my brother?" I could not do that at the time, no.

Q. My question to you was: You knew you could testify if you had wanted to; didn't you?

A. No, because nobody asked me.

Q. All right. You thought that you had to be asked first?

A. Well, yes. My brothers and sisters –

MR. NOLAS: I object.

THE COURT: Just a minute.

A. I guess that they were approached.

THE COURT: Just a minute. Just a minute.

MR. NOLAS: The claim is an ineffective assistance of counsel claim. What is [159] the relevancy of a witness's – I mean a witness is a witness. Lawyers call witnesses. Witnesses don't just show up, get up on the stand, and start talking.

THE COURT: Well, no. I see what the relevance is.

Go ahead.

MS. [sic] McINTYRE: Thank you, your Honor.

BY MR. McINTYRE:

Q. All right. So your answer is no?

A. If you want to ask me would I have if someone would have asked me, yes, I would have.

Q. I don't think I asked you that question.

A. No. I'm saying if you would have or if somebody would have asked me at that day, "Would you go up?" yes, I would, just like I am here telling the truth. I would have went up, sure. He's my brother. I love him.

Q. Do you know why none of your brothers who did testify or sister who testified mentioned anything about this abuse that you've told us about?

A. Nobody asked any of them at the trial when they testified about any of our childhood, [160] no.

Q. Did you ever – is that the reason they told you?

A. No. Nobody ever mentioned – asked questions about our childhood.

Q. Try to focus on the question, which was: Do you know why neither of your two brothers or Sandy, the ones who did testify, didn't mention anything about this abuse?

MR. WISEMAN: Again, she just answered the question.

A. Why would they?

THE COURT: Just a minute.

A. They weren't asked about their childhood.

THE COURT: Just a minute. When I talk, people keep talking. I don't understand.

THE WITNESS: I'm sorry.

THE COURT: That's not how it's supposed to work.

THE WITNESS: Sorry.

THE COURT: All right. I'm sorry, Mr. Wiseman.

MR. WISEMAN: My objection was [161] it seems to me that she answered the question. Her answer was they weren't asked; that's why they didn't talk about it.

THE COURT: I don't know. I think the question was –

MR. McINTYRE: I can live with that. I'll ask another question, your Honor.

THE COURT: All right. Okay.

BY MR. McINTYRE:

Q. All right. How do you know that that's not – that that's the reason that they didn't mention anything?

A. Because I was here, and I know what they asked them, and it was not about our childhood. Because if they had asked what about Ronald's childhood and abuse, they would have spoke, yes, because it's a true fact. We were abused kids. We were beaten. We had no love. That is true. And I would take a lie detector test right today. That is true. And I hate my father today. I hate him.

Q. Did you get this information –

A. No, I got no information, no. This is from my heart.

MR. MCINTYRE: Your Honor, I [162] need some help now. I need to be able to finish my questions.

THE COURT: Ms. Rompilla –

THE WITNESS: I know.

THE COURT: – he didn't finish the question. You didn't know what he was going to ask.

THE WITNESS: I'm sorry.

THE COURT: Just calm down. Take a couple deep breaths and just wait till Mr. McIntyre finishes the question.

THE WITNESS: I'm sorry.

THE COURT: All right.

BY MR. McINTYRE:

Q. Now, what I'm asking is: Did you get the information that you just gave to us that the reason Nick, Darlene, and Robert did not mention the abuse is because they were not asked for it – did you get that from them? Did they tell you that?

A. No. Nobody talked about the abuse at that time, because it wasn't a subject at that time.

Q. Okay. And were you present with Nick, Darlene, and Robert at all times that they were [163] conversing and preparing their testimony –

A. No, I was not.

Q. – with the defense attorneys?

A. No. I was not there, no.

Q. So you wouldn't know what was spoken about that?

A. No, no.

Q. Okay. Do you know why the defendant would tell or answer in an interview form that he had that he was never abused? Do you know why he would do that?

A. I didn't hear it.

Q. You didn't hear that?

A. No.

Q. Do you know why he would answer a question I believe at the time of a counseling session after his conviction in this case, "Have you ever been abused?" and he would answer, "No"? Do you know why he would do that?

MR. WISEMAN: Objection, your Honor. May we know the basis for the question? Is there a a [sic] good faith basis? I'm not sure where he's going.

THE COURT: I don't know how she could possibly know that. How she could [164] possibly know that?

MR. WISEMAN: I would object on that grounds, as well.

MR. McINTYRE: It's based on her direct in which she said, "No, back in those days we never mentioned abuse." Unfortunately, at the time of this question it wasn't back in those days. And this is how I wanted to follow it up.

THE COURT: Objection sustained. That's something she'd have no knowledge of.

MS. [sic] McINTYRE: All right.

BY MR. McINTYRE:

Q. Now, isn't it true, ma'am, that the family members were presented with a little bit of a dilemma at the defendant's trial?

MR. WISEMAN: Objection to form, your Honor.

MR. McINTYRE: I'll make it more clear.

THE COURT: That's pretty broad.

MR. McINTYRE: I would never get an answer with that one.

[165] BY MR. McINTYRE:

Q. All right. See if you can follow me on this. Didn't you say a few minutes ago that you didn't want to make – you didn't want to say something about abuse because that would make it look like he did it, and that was like offering an excuse for him? You didn't say that?

A. No.

Q. Okay. Isn't that true, though, that that's the dilemma that the family faced; and if they came in and said, "Oh, he's an abused person," that would be seen as trying to excuse his conduct, not saying that he was not the person who did this?

A. No. We didn't think that way, because we didn't know to this day if he did it.

Q. Isn't that the position that the family took –

A. No.

Q. – that he did not do it?

A. Well, yeah, we believe he's innocent, of course.

Q. And isn't that what Nick, Robert, and Darlene all said at the penalty phase in this case, "He did not do it. I don't believe he did [166] it"?

A. They never said that. To who –

Q. Did you read the notes of testimony?

A. No, I didn't read it, and I don't know what they said. But –

Q. Well, you were present; right?

A. – they never said – they didn't say my brother didn't do it. They weren't asked questions like that. Nobody asked them. "Oh, do you think your brother did it?" I don't recall that they asked that.

Q. You were present; right?

A. Yes.

Q. And in your opinion they never gave their belief that your brother did not do the crime? Is that what you're telling us?

A. To tell you the truth, I don't remember even what they said.

Q. All right. You haven't been able to read the notes of testimony?

A. I didn't read anything.

Q. Okay. All right. Have the other brothers than sisters ever been accused of murdering anyone?

A. No.

[167] MR. McINTYRE: I have no further questions.

THE COURT: All right. Mr. Wiseman. Mr. Nolas.

REDIRECT EXAMINATION

BY WISEMAN:

Q. You mentioned, Miss Rompilla, that one of your brothers passed away?

A. Yes, Richard Rompilla.

Q. What did he die from?

A. He was a heavy drinker, too. And he died of liver – sclerosis of the liver.

Q. Were other of your siblings also heavy drinkers?

A. They were all drinkers, Ronald, Nick, and Richard.

MR. WISEMAN: I have nothing further. Thank you.

THE COURT: Anything further?

MR. McINTYRE: No, your Honor.

THE COURT: You may step down, ma'am. Thank you.

THE WITNESS: Okay. Thank you.

[168] MR. WISEMAN: Your Honor, I have one more question. I'm sorry.

THE COURT: All right.

MR. WISEMAN: I lost my piece of paper.

THE COURT: Miss Rompilla, I'm sorry, there's one more.

MR. WISEMAN: I have too many papers in front of me.

BY MR. WISEMAN:

Q. You saw your brother Nick today?

A. Yes.

Q. When was the last time saw him before today?

A. In 1988 was the last time I seen him.

Q. And where was that?

A. In here, the trial for Ronald.

MR. WISEMAN: Now I have nothing further. Thank you, your Honor.

THE COURT: Anything further?

MR. McINTYRE: No, your Honor.

THE COURT: You may step down, ma'am. Thank you.

[169] NICHOLAS ROMPILLA, JR.

was called as a witness and, having been duly sworn, was examined and testified as follows:

THE COURT: You may be seated, sir.

DIRECT EXAMINATION

BY MR. WISEMAN:

Q. Tell the Court your name, sir.

A. Nicholas Rompilla, Jr.

Q. And how old are you?

A. Fifty-three.

Q. And do you know Ronald Rompilla?

A. He's my brother.

Q. And where are you in age in relation to him?

A. I think he's around 47. About six, seven years difference.

Q. And where are you in relation agewise to your other siblings?

A. I'm the second oldest.

Q. I want to ask you some questions about what it was like in your house when you were growing up and when Ron was growing up. Tell the Court whether your father drank and, if so, with what regularity.

[170] A. Well, at the time he was drinking every day. He always did. He was abusive and this and that there.

Q. Sorry?

A. I said he was abusive when he drank.

Q. Let's stick with the drinking first. All right? I want to ask you some specific questions. When you say he drank every day, what quantities did he drink if you remember?

A. I couldn't tell you the quantity, but it was pretty much. He drank whisky and beer.

THE COURT: If you can pull your chair up and speak into the microphone, that will probably help everyone to hear. And you can move the microphone.

THE WITNESS: All right.

THE COURT: All right.

BY MR. WISEMAN:

Q. Do you recall if he drank to intoxication?

A. Yes.

Q. Did he do that on a daily basis? Weekly? Monthly? How often did he do that?

A. It was like four times a week.

Q. And did your mom drink at all when you [171] were growing up?

A. She drank every day.

Q. And you say she drank every day. Did she drink to intoxication?

A. Well, she would start in the morning, and she wouldn't finish till she went to bed. And that's seven days a week.

Q. Do you recall when your mom was carrying – was pregnant with any of your younger siblings?

A. Yes.

Q. Do you recall whether or not she continued to drink when she was pregnant with her children?

A. She drank to the day that she went to the hospital. She would drink when she knew she was going – when she was going to deliver. My dad wasn't around. She would drink beer, and then she would walk to the hospital. Sacred Heart, and she would deliver the kid, the baby.

Q. That's the day of the deliverly [sic]. I'm talking about the nine months that she was carrying the child.

A. She drank every day. Every day. She never stopped.

[172] Q. Now, did your mom or your dad ever hit you? Withdrawn. Do you recall specifically if she drank when she was carrying Ron?

A. Yes.

Q. She did?

A. Right.

Q. Do you recall whether your mom or dad ever hit any of the children in the family?

A. Yes, he did. When you were wrong I guess, he did hit you.

Q. When you were wrong. What do you mean by "when you were wrong"?

A. Well –

Q. Misbehaved?

A. If you didn't listen to him. Like if he told to you do something, you know, and you didn't do it, and if he was drinking, he would hit you. He would hit you with his hand, whatever was there, you know.

Q. Do you have any specific recollections of being hit with something other than his hand?

A. With a belt, broom, stick, you know.

Q. You say he would do that when you did something wrong. You wouldn't listen to him. Did he ever hit you for no apparent reason, like when [173] you weren't clear why he was hitting you?

A. Not that I recall.

Q. So you had to do something specifically wrong?

A. Right.

Q. Did he ever hit you for doing something that was wrong that was, in your mind, not a real wrong thing, a little thing?

A. I can't recall.

Q. Okay. Do you recall anything about a cage in your house?

A. Yeah.

Q. What house was that?

A. Where we lived on Fourth Street I think it was, 37 North Fourth Street. We did wrong, and he took me and my brother – he had a box cage. He put us in there, and he nailed slats across. And we ate in there. We slept in there. We urinated in there. And the only time he let us go out – get out is if we had to go do the other thing. And we stayed in there for about a week.

Q. When you say –

A. He would keep us inside. And if it was nice, he would drag us out on the back porch.

Q. So this little cage thing was in your [174] house, in the living quarters?

A. Right.

Q. And if you recall – I know that's a long time ago. Approximately how big a thing was this?

A. Well, it was enough for two people to sit in with their knees bent up, you know, like the position like this. And you got to consider we were young, too. So the box was enough for two just to sit with your knees bent.

Q. Now, when you say "two kids in it," it was you, and who was the other kid who would be in there?

A. My brother. Richard.

Q. Did you ever see him put Ron in there?

A. No.

Q. Did you ever see Ron see you in the cage?

A. If he would remember, you know, because he was born in '48, and this probably was around '49. And he would be just about a kid, a baby, you know.

Q. Was this cage thing something that happened just once or twice, or did it happen over a period of years?

[175] A. It only happened once.

Q. How long did he have you in there on that occasion?

A. If I recollect I think it was about a week. About seven days.

Q. Do you recall what precipitated him putting you and your brother in that cage?

A. Why he put us in there?

Q. Or why he told you he put you in there. Did he tell you a reason?

A. Well, we stole.

Q. You stole something?

A. Right.

Q. Do you remember what it was you stole?

A. The rent money.

Q. How old were you then?

A. Seven, eight, somewhere around there.

Q. Now, you wound up going to reform school at the age of nine?

A. Well, I was in the orphanage for two years. Then I went – after that I went into a reform school in Philadelphia, Saint Gabriel's, whatever they call it.

Q. Do you remember why you were sent to the orphanage?

[176] A. Well, they said I was incorrigible. I was getting in trouble and not listening in school, skipping school, things like that. Stealing. I suppose that was part of it, too.

Q. After the orphanage did you ever go back to school?

A. Well, the orphanage was basically around '46, '47, after the war. It was after the war. And it was me and my sister. We were in there for two years.

Q. Now, when your father wasn't hitting you on those occasions, did he say nice thing to you?

A. No. He was always putting us down. You know, if you didn't do something right, he would call you a nitwit,

whack you across the head. "You'll never learn. You'll be stupid." He done that for years. Even if I would go over there today and talk to him, he says, "You're still stupid." That's the way he was.

Q. Did your father's behavior change when he was sober to when he was drunk?

A. He was always out. The only time I ever seen him is when came in, and that was like in the evening, you know. And we would have to go bed early anyway.

[177] Q. When was the last time you saw your father?

A. I think when my brother died. I think that's about seven, eight years ago I guess, nine years ago.

Q. Is that your brother Richard?

A. It could be seven years ago. Richard, yes.

Q. Do you have any memories of happy occasions in your household?

A. No.

Q. Did your mom or dad ever hug you and kiss you and tell you you were a good boy?

A. No.

Q. Did they ever do that to Ron when you were around?

A. No, not that I knew of. I couldn't tell you that, I mean.

Q. Sorry?

A. I don't remember. I couldn't tell you that. I don't know.

Q. You don't remember it happening?

A. He didn't do anything for the family. He didn't take us nowhere. He didn't do nothing. We were just there. And if we were a bother, we'd [178] be sent to the room or get outside and do what you got to do, play or whatever, you know. It wasn't a close family, you know.

Q. Do you recall what Ron was like when he was still – when you were still at the house?

A. Quiet, drawn back, you know. Something like that, you know.

Q. Now, the house that you grew up in, can you describe the physical – withdrawn. Did the house you grew up in have plumbing?

A. Well, you had plumbing on the outside.

Q. What do you mean?

A. We lived in a cellar. It was converted into a semi-apartment. You had a coal bin, you had one big bedroom, and the rest was kitchen and living room. And the bathroom was on the outside. There was plumbing there. It was a toilet. Because we took a bath in a bathtub. You know, heat the water up, and you took a bath.

Q. Was your family rich or poor?

A. Poor.

Q. Do you remember having lots of toys and things to do when you were a child?

A. We didn't have nothing. We were on our own. We basically did what we wanted.

[179] Q. Do you remember whether or not your father ever had women that he brought around other than your mom?

A. Not around the house – I mean our apartment. But occasionally when I got out – I was on parole, and I wanted to go in town, he would make an excuse. He says, "Well, I'm going to take" – well, he would call me Bumper, my nickname, you know. And he said, "I'm going to take him into town." And he would drop me off. You know, then I knew where he was going, because he took me to a place with a woman that he was dating at that time.

Q. Do you remember her name?

A. I think it was Mary Pletz. I think her last name was Pletz. They lived down on Gordon Street. It's a long time.

Q. So you were aware that your dad was seeing this woman?

A. Well, I was with him on one occasion. And I told him I won't be around that anymore, because he tried to fix me up with another woman, but I didn't want nothing do with it. I was more like, you know, how this can happen, you know. And I wanted to say something to my mother, but I [180] knew they were going to continue to fight, and probably, you know, whatever could have happened I don't know.

Q. Did your mom and dad ever have physical fights?

A. Yes. He would punch her. She would have black eyes. She'd be bruised on her arms and this and that. I've seen it. I was there.

Q. When your dad would hit you and Ronald and the other children, did he have a special place like to hit you on the body, or was it more wherever the blows landed?

A. Wherever his hand reached.

Q. Were you ever hit in the head by your father?

A. Plenty of times.

Q. Did you ever see Ron hit in the head by your father?

A. Did I survive it?

Q. I said: Did you ever see Ron hit in the head by your father?

A. A couple of times.

Q. Now, when Ron got out of jail in 1987, who did he live with?

A. He lived with me.

[181] Q. And during that time was he abstaining from alcohol, or did he drink alcohol?

A. In the beginning he wasn't doing nothing. But I know he was smoking marijuana at the time, you know.

Q. When you say "in the beginning," did it change at some point?

A. Yeah. I'd say like in about a month and a half. About a month after he was there.

Q. What happened? What did he begin to do?

A. Well, he'd drink a beer then if we went out, you know. Like I said, I went to the bar and I played darts there. He would be with me. He played darts. We'd have a beer or two. Then I would leave. Then he'd go on his own. A few times I seen him that he was drunk.

Q. Did Ron drink before he went to jail?

A. Yes.

Q. Before he went to jail in the seventies?

A. Yes.

Q. Did he drink moderately or excessively?

A. Excessively.

Q. What do you mean by that? Tell the Court.

A. Well, when you drink, you know – like [182] he drank mixed drinks basically, you know, whiskey or Seven and soda, something like that. And he would drink it down fast. Before you know it, he had another one. You know, that would be going on and on, you know.

Q. Now, you testified at your brother's trial back in '88.

A. Yes.

Q. Do you remember that? Did you testify to any of the facts that you've testified to here today?

A. No.

Q. Is there a reason for that?

A. Nobody ever asked I guess.

Q. You weren't asked these questions?

A. I wasn't asked these questions, no. It was just during the three months that he was out. That was it. The three months he was out, that's all he asked about.

Q. During the trial?

A. Yes.

Q. Now, when the lawyers asked you before your testimony about testifying, did they discuss with you talking about your childhood or did they discuss with you talking about the three months or [183] something else?

A. The only thing was just about the three months he was out. They didn't ask anything about childhood or anything like that. Because they did have an investigator there, and he never even asked that.

Q. Now, you said that the children were beaten in the family, and you mentioned hands and you mentioned I think a belt. Was there ever anything – I think you said a broom also; is that right?

A. And a broom and a stick.

Q. What kind of stick was it? Do you remember?

A. Could have been part of a broom handle or a brush, whatever.

Q. How often were you and the other children beaten?

A. That's hard. I don't know. Say maybe twice, three times a week, you know, if we did something wrong.

Q. Now, when your dad would beat you, did he go off and do it in private, or did he do it in front of the other kids?

A. In front of everybody. Wherever he [184] caught you at, you know. Maybe at the dinner table. It could be if you were in the kitchen doing something, you know. "I heard you did something wrong at school," and smacked you back of the head, kick you in the ass, give you a punch.

Q. Were there times that you saw Ron get beaten?

A. Not at that time, no.

Q. Sorry?

A. Not at that time. I'm just talking about myself, you know, at that time, you know.

Q. I see. Were there times when you were beaten in front of Ronald?

A. If – I don't know. I don't know if he remembers that or not.

Q. Well, leaving aside if he remembers it, do you remember it?

A. Not that I recall, no.

Q. You testified that your dad would say things like you're stupid, you're not going to amount to anything, those kinds of comments. Did he say those kinds of things to Ron, or were you gone by then?

A. He said it to all of us. You know, it's [185] just the way he was, the way he spoke, you know.

MR. WISEMAN: I see. Just a moment, your Honor.

THE COURT: Uh-huh.

MR. WISEMAN: Nothing further, your Honor. Thank you, sir.

THE COURT: All right, Mr. McIntyre.

MR. McINTYRE: Thank you, your Honor.

CROSS – EXAMINATION

BY MR. McINTYRE:

Q. Good afternoon, Mr. Rompilla.

A. Hi.

Q. I've got some questions I'd like you to answer if you can.

A. Sure.

Q. All right. You are the oldest of the children?

A. The second oldest.

Q. The second oldest?

A. Right.

Q. Who is the oldest?

[186] A. My sister Barbara.

Q. Okay. And what are you, three years older than the defendant?

A. No, about six or seven.

Q. Six or seven. When were you born, what year?

A. I was born in '42, July 17th, '42. He was born I think in '48.

Q. All right. Do you consider your family to be a close one? Not the parents. The brothers and the sisters.

A. No.

Q. All right. Do you have any contact with any of your brothers and sisters?

A. I haven't seen anybody for seven, eight years, sometimes nine years.

Q. Back at the time of the trial, the defendant's trial, did you see your brothers and sisters then?

A. A few.

Q. Did you watch the trial?

A. I was here on some occasions.

Q. And then you eventually testified?

A. Right.

Q. All right. When you were watching the [187] trial, would you have time during breaks and things to discuss your brother the defendant's predicament with your brothers and sisters?

A. No.

Q. You didn't talk to them at all about it?

A. No.

Q. All right. Was there any talk about what the brothers and sisters could do for him, how they could help him?

A. No.

Q. None at all?

A. Nothing.

Q. All right. Do you know how you got to be a witness?

A. Well, because he lived with me, and I was the last one to see him. It was about ten of 1:00 in the morning. And there was another thing about the bank bag, and they said, "Well, you're going to be a witness for this." And they never brought that stuff up anyway, so –

Q. All right. What I meant was more like the procedure. How did you – how did it happen that someone said to you, "I'd like you to testify"? Do you remember that?

A. Well, I think it was – this goes back. [188] Well, it was – their investigator came to the house.

Q. First an investigator?

A. Right.

Q. Not one of the lawyers?

A. Not that I recall. I don't remember. It's too long.

Q. All right. What did the investigator ask you?

A. He just asked about the three months he was out. That was about it, you know, and that was it.

Q. All right. And at some point did you get to speak to your brother's lawyers?

A. Yeah.

Q. All right. And do you remember who they were?

A. George –

Q. How about Fred Charles?

A. Fred Charles.

Q. Do you remember Maria?

A. Maria Santos, yes. I was trying to think of his name.

Q. All right. Before they put you on the stand as a witness did they talk to you, explain [189] to you what the procedure was at that time?

A. Some of it. Not much.

Q. All right.

A. They didn't say anything. They said they were – they were just going to ask me just about the three months he was out. That was it.

Q. All right. Well, let me ask you this. You knew that when you testified he had already been found guilty by the jury; right?

A. Right.

Q. All right. And was it explained to you that the next process was to determine what kind of punishment?

A. Right.

Q. All right. And it was explained to you, was it not, that the defense had the right to offer evidence to get the jury to give him the life sentence rather than the death penalty?

A. Right.

Q. All right. And did you understand that that meant that you were supposed to – or evidence was going to be offered to, as we call it, mitigate, make it less, the charges that he had been convicted on?

A. No, I don't think so.

[189] Q. Let me run that one by you.

A. I think so. I know what you mean, but –

Q. That was never explained to you that the purpose of that hearing –

A. No no, no, no.

Q. All right. You had no idea that that was –

A. No. They only said this next phase was to have – the time I came up to testify was because of that, the mitigating circumstances, aggravating circumstances, or whatever, something like that.

Q. You remember that?

A. They said a few things about it, yes, I remember.

Q. And did you know that mitigating circumstances meant circumstances that would lessen the nastiness of the crime, make it less?

A. No, I didn't know that.

Q. You didn't know that?

A. No.

Q. All right. Did you think at that time, Mr. Rompilla, that this family life that you've evidenced, that you saw for yourself and for your [191] brother, did you think that would be something the jury should know about?

A. I think so, yeah. Because look at my life, I did almost eleven and a half years, you know. The only reason I got away from the situation was I found it better to go to jail. And that's exactly what I did. I didn't have to be with the family. I didn't have to see this. It got to a point where I told my dad I'd kill him, if you want to know. But I told him that when I was like 22, 23. You know, I said, "I should have killed you years ago, because you brought the family nothing but misery." I mean he's my father. I hate to talk like this. But, look, I went through it. A lot of them went through it. My family. That's why we're not close anymore.

Q. Did you ever discuss this family life with Maria Dantos and Fred Charles?

A. No.

Q. All right.

A. They never asked.

Q. Weren't you asked about – a general question about what your brother's family life was like?

[192] A. I can just say at the time it's what I can remember. Because in the period I wasn't around – see, like I was always in jail myself. You know, when I got out, I didn't live there. You know, I got my own place.

Q. All right. My question was: Weren't you asked by your brother's attorneys what his family life had been like?

A. Not that I recall. I couldn't tell you.

Q. Meaning that you could have been but you don't recall?

A. Probably not. I don't remember it. Otherwise, I would have remembered it. I don't think so.

Q. All right. Did you ever volunteer any evidence to the defense attorneys about what your brother's family life was like?

A. Nobody asked. I don't know. I didn't say anything, no.

Q. I take it you were present, though, with both Miss Dantos and Mr. Charles, and you did have the opportunity to speak to them?

A. But they never –

Q. Did you ever – let me finish the question. You did have the opportunity to speak [193] to them; right?

A. But they didn't say anything. They didn't ask me that.

Q. And you never volunteered it?

A. No.

Q. All right. Now, let me just talk a little bit about what was brought up about the family life. This cage incident, you never saw the defendant ever being put into this cage or this pen as we've heard it described; right?

A. Not that I – no.

Q. All right. And do you even know if he ever even witnessed you being put into this cage or this pen?

A. It's a possibility. I don't know.

Q. All right. It's a possibility he never saw it; right? Right?

A. But he was there.

Q. All right. But it occurred one time, as I understand, for a one-week period. Is that it?

A. Right. Right.

Q. And how old were you then?

A. I said between about eight – seven or eight years old.

Q. Which would make him how old at that [194] time? One or two?

A. It could be about two, one or two.

Q. All right. All right. We had heard about your father hitting you, and then suddenly the words changed from "hit" to "beat." When you used the word "beat" or answered questions that had the word "beat" in them, did you use it in the same way you mean "hit"?

MR. WISEMAN: Objection to the word "suddenly," your Honor. That's his characterization.

MR. McINTYRE: I'll take off the word "suddenly."

THE COURT: It's a bit argumentative. Rephrase the question.

BY MR. McINTYRE:

Q. All right. When you used the word or hear the word or answered questions with the word "beat" in it, do you mean that to mean the same thing as the word "hit"?

A. No, because he knocked me out already.

Q. All right. One time he hit you so hard he knocked you out?

A. A couple times.

Q. All right. A couple times?

[195] A. Yeah.

Q. All right. Did I understand you to – did I hear you say that you saw the defendant get hit twice by your father? "Punched" I think the word was.

A. It could be more. It's kinds of hard. It's so many years ago.

Q. But did you say that on direct, "about two times," when someone asked you if you ever saw him get punched in the head or punched?

A. Smacked in the head. Smacked in the head.

Q. Smacked. Does that mean with an open hand?

A. Open hand.

Q. That's not a punch with a closed fist.

A. But when he hit, he hit you hard. You felt it. You flew.

Q. But would you just answer my question. A punch is with a closed fist. A smack is with an open hand.

A. Right.

Q. And you mean a smack?

A. Right.

Q. All right. And did I also understand [196] you to say that your father would hit you when you did something wrong?

A. Yes.

MR. McINTYRE: I have no further questions.

THE COURT: All right, Mr. Wiseman.

REDIRECT EXAMINATION

BY MR. WISEMAN:

Q. Just a couple things, Mr. Rompilla. The cage that you described, what house were you living at at that time? What was the address?

A. I think it was 37 North Fourth Street.

Q. Now, your sister Randi testified to a dog cage at South Fifth Street. Is that a different cage than the one you're talking about at 37 North Fourth Street?

A. It's a possibility. But I wasn't there. I don't remember. I don't know anything about that one, you know.

Q. Now, you left the family house for the orphanage or reformatory, whatever it was that you went to, at about the age of nine; is that right?

A. Two years old and when I was nine.

[197] Q. Okay. So when you left at the age of nine, Ronald would have been about two or three years old?

A. Somewhere around there.

Q. Approximately?

A. Approximately, yes.

Q. And so during the time that you were in the house when Ron was three and younger, you recall him being hit two or three times in the head by your father?

A. I seen him hit a lot of them when they was just babies, you know.

Q. Now, the specific questions I've asked you today, "Were you hit?" was that question ever asked of you either before the trial or during your testimony by Ronald's lawyers at the time of the trial?

A. No.

Q. Was the specific question of, "Did your father drink to intoxication?" – was that ever asked of you at that time?

A. I don't think so, no.

Q. Was the specific question about whether your father and mother would have physical altercations in front of you and your siblings – [198] was that ever asked of you at the time of the trial?

A. No.

Q. Was the fact that your father had a girlfriend that you and your siblings knew about – was that asked of you at the time of the trial by Ronald's lawyers?

A. No.

MR. WISEMAN: Nothing further.

MR. McINTYRE: No questions.

THE COURT: Thank you, Mr. Rompilla. You may step down.

THE WITNESS: Thank you.

MR. WISEMAN: May we have ten minutes, your Honor, if that's all right?

THE COURT: I'll tell you what I'd like to – if we can go till about – go another 20 minutes or so, because then I have another matter. I have to take a phone conference, and I'm not sure how long that will be. So I'd like to go that long and then take a break at that point.

MR. WISEMAN: All right.

Barbara Harris, please.

[199] BARBARA HARRIS

was called as a witness and, having been duly sworn, was examined and testified as follows:

THE COURT: You may be seated, ma'am.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. WISEMAN:

Q. State your name, please.

A. Barbara Harris.

Q. And do you know Ronald Rompilla?

A. Yes, I do.

Q. And what is your relationship with him?

A. He's my – I'm his sister. He is my brother.

Q. And what is your age in relation to Ronald's?

A. I'm 54.

Q. So you're about six years older than him?

A. Uh-huh.

Q. Where do you rank in the Rompilla siblings as far as age goes?

A. I'm the oldest.

Q. Now, I want to ask you some questions [200] about your mom and dad when you were growing up. Did your father ever hit you?

A. No.

Q. Did your father ever hit any of the other children in your family?

A. The younger ones.

Q. And did you ever see your father hit your brother Ronald?

A. Yes.

Q. When your father hit Ronald, what did he hit him with?

A. A belt or his hands. The face. He hit him in the face.

Q. Did he ever – did he use anything besides a belt and his hand?

A. No.

Q. When he would use his hand, was it an open hand or closed a hand?

A. Open.

Q. Did he hit him on particular parts of his body or all over his body?

A. Mostly his face, his back.

Q. Did your mom ever hit Ronald?

A. Not as much.

Q. But did she ever hit Ronald?

[201] A. Yes, she did.

Q. How often would your father – how often did your father hit Ronald?

A. Pretty much. He picked on him a lot.

Q. When you say "pretty much," was it something that happened on a daily basis? Once a week?

A. No, I'd say maybe about three times a week.

Q. And how frequently did your mom hit him?

A. Not as much as that.

Q. Were you treated any differently by your mom and dad than Ronald was?

A. I was my dad's favorite. But my mother was very strict with me.

Q. Did your mom ever hit you?

A. Sure, yes.

Q. Did your mom and dad drink alcohol?

A. Yes, they did.

Q. And how would you describe their alcohol consumption?

A. My mother drank from day to night. My dad, not as much as my mother did.

Q. How frequently did your mom drink?

A. Every day, seven days a week.

[202] Q. How frequently did your dad drink?

A. Not seven days week, but he drank.

Q. When your dad drank, did he drink to intoxication?

A. Yes.

Q. And did he do that pretty much every time he drank?

A. Yes.

Q. When your dad was hitting – withdrawn. Did your dad hit other kids in the house besides Ron?

A. My other brothers, Nicholas, Richard, the one that passed away, and the youngest one was a favoritism.

Q. Was what?

A. He was a favorite.

Q. So you were a favorite, and the younger one was a favorite?

A. Yes, we were.

Q. And everyone else in between was treated more or less the same?

A. They were abused.

Q. When you say they were abused, what do you mean? Try –

A. Hit all the time, picked on. They were [203] rough with them.

Q. "They" being your parents?

A. My mother and my dad, yes.

Q. Did your family have a lot of money?

A. No.

Q. Did your mom and dad – withdrawn. Did your dad ever praise you and your siblings?

A. You mean me?

Q. He praised you?

A. I was his favorite.

Q. What would he say to you, what kind of things?

A. Well, they called me Bobbie. They never called me Barbara. They'd say, "Bobbie, do you want a soda? Do you need money? Do you need clothing?" And I got it.

Q. And did you hear him do the same types of things with your siblings?

A. No, they couldn't – no, they didn't get – they had hand-me-downs or they didn't get any money.

Q. Did he ever praise them in terms of, you know, if they did something good he'd say, "Oh, good job. I'm proud of you," that kind of thing?

A. No, not with the boys.

[204] Q. Did you ever hear him say anything affectionate towards the children –

A. No.

Q. – excluding you?

A. No.

Q. Did your mom ever tell nice things to the boys?

A. No.

Q. Conversely, did your mom and dad say nasty things to the boys?

A. Excuse me?

Q. Did your mom and dad say nasty things to the boys?

A. They hollered at them, yes, that they're dumb or that they're not bright or they're stupid.

Q. Did they talk about what future prospects the boys would have for success in life?

A. No.

Q. What did they say about it?

A. They wouldn't amount to anything.

Q. When you'd see you [sic] dad hitting Ron, what did Ron do? How did he react?

A. Well, he cried a lot. He was quiet, kept everything inside. He was very nervous.

Q. As a child?

[205] A. As a child, very nervous.

Q. Now, aside from your mom and dad, did other people in your family drink?

A. My brothers.

Q. All three or four brothers?

A. Richard, Nicholas, Ronald, and my youngest brother, Robert.

Q. And if I use the term "drinking problem," would you say they had a drinking problem or didn't have a drinking problem?

A. I'd say they had a drinking problem.

Q. How did your youngest brother die? Do you know? I'm sorry, your younger brother, the brother that died, how did he?

A. He died from drinking. He had a brain hemorrhage. He had sclerosis of the liver. His kidneys failed. He was in pretty bad shape.

Q. Do you remember a point when your brother Nick left the family home when he was pretty young?

A. My brother Nick?

Q. Yeah.

A. Yes.

Q. Do you know where he went?

A. I think he was put away.

[206] Q. Did that happen to you, as well?

A. You mean in a home?

Q. Yes.

A. We were – me and Bumper were put in a home for two years.

Q. And how old were you then?

A. I don't remember. I was little.

Q. You were a baby?

A. My dad was in the service, and my mom couldn't take care of us.

Q. All right. And then you came back to the family home?

A. My dad got us out.

Q. And then there was a time when Nick was a little bit older. Did he go to reform school?

A. Yes he did. I remember.

Q. You remember that?

A. I don't remember it clearly, but I know he was in one, Camp Hill, something like that.

Q. Do you remember your mom being pregnant with your younger brothers and sisters?

A. Yes.

Q. Did she stop her drinking when she was pregnant?

A. No. My mother drank and smoked.

[207] Q. To the same level even as compared to when she wasn't pregnant?

A. Uh-huh.

Q. Do you remember your mom and dad having fights in front of you and your brothers and sisters?

A. Yes. My mother got beat up, and I had to protect her, come down with a shovel or something to get my dad away from her.

Q. How old were you when that happened?

A. We lived on Fourth Street. I could have been 12, 11, maybe 13. I don't know. Young.

Q. Now, the fighting that your mom and dad did with each other, did they do that off in private, or did they do it in front of the family?

A. In front of all of us.

Q. Do you have a specific recollection of Ronald being among the group?

A. Ron was there, yes.

Q. Now, you were talking about what Ronald was like when he was little. I think you said he was sort of quiet?

A. Quiet, kept everything inside, and he was a very nervous child.

Q. When you say he was nervous, can you [208] describe that a little bit?

A. Well, he always – when he was nervous, he just kept eating and eating and eating, overeating. We had to take him to the hospital because he just stuffed himself so much with eating.

Q. When Ron got out of jail –

MR. WISEMAN: May I just have a moment, your Honor?

BY MR. WISEMAN:

Q. When Ron got out of jail in 1987, do you know who he lived with at that time?

A. My brother Nicholas.

Q. Did you see Ron during that time?

A. Yes, he came to visit me.

Q. Do you know whether or not – withdrawn. Did Ron ever drink before he went to jail in the 70's?

A. I'm sure he drank, yes. I don't know for sure.

Q. When Ron got out of jail in '87, he was living with Nick?

A. Right.

Q. Did he drink at that time?

A. I wouldn't know. He came to visit me [209] one time.

Q. Now, where were you living in 1988?

A. 642 North Lumber Street, Allentown.

Q. Did you attend the trial proceedings?

A. No, I didn't.

Q. What were you doing at that time?

A. I was working at the Sacred Heart Hospital.

Q. Did anybody from – any of Ron's lawyers at that time or his investigator or anybody like that ever come to talk to you about the case?

A. No.

Q. And you didn't come to court at all?

A. No, I didn't.

Q. Did you discuss with your brothers and sisters the trial that was going on? Did you sort of stay abreast of things?

A. No. We weren't close.

Q. Now, if someone had spoken to you back then about the case, would you have been willing the [sic] talk to them?

A. If they came to approach me about it. But nobody ever came to me.

Q. And would you have answered questions in court like you're doing today?

[210] A. Yeah.

Q. When your dad was beating up Ronald or hitting Ronald, did you ever try to intervene, to stop it in any way?

A. I used to tell him to stop it, but he was a big man. I mean, he was bigger than me. So I guess he just pushed me aside.

Q. You physically would try to stop it?

A. Yeah, I tried.

Q. Were you ever present when Ron was present and one of your other brothers or sisters was being hit or beaten by your dad?

A. No.

MR. WISEMAN: I have nothing further. Thank you, ma'am.

THE COURT: All right. Mr. McIntyre.

CROSS-EXAMINATION

BY MR. McINTYRE:

Q. Good afternoon, Mrs. Harris. When were you born, ma'am?

A. May 9th, 1941.

Q. 19 –

A. 41.

[211] Q. – 41. And your brother Nick was born what year?

A. A year behind me.

Q. All right. Now, I believe that you said on direct examination that your mother would drink before every pregnancy of all the younger children. Surely as a one-year-old you don't know that your mother was drinking when Nick was –

A. Not a year old, no.

Q. All right. Now, do you know when the defendant was born?

A. No.

Q. All right. Well, how many years younger than you is the defendant?

A. I'm six years older than Ronald.

Q. Are you telling the Court that as a six-year-old you already knew that your mother was drinking alcohol?

A. Not at six years old, no.

Q. All right. So you don't know if she was drinking at the time that she was carrying the defendant; do you?

A. Well, she drank all the time, so I figured she drank.

Q. All right. Try to answer my question. [212] You don't know that she was drinking at the time that she was pregnant with the defendant; do you?

A. No, I don't know that.

Q. All right. I believe you also said – and I'm going to quote – that your father used to, quote, "hit all the time, hit the boys all the time." All right. But you filed an affidavit back in November of 1995; did you not?

A. Uh-huh.

Q. And you indicated in that – and I am going to try to quote it, but I may be a word or two off. We can get it if we have a problem with it. "He would spank the boys. He would spank us when we got into trouble."

A. Right.

Q. All right. Isn't that the truth, that your father would hit the boys when they got into trouble?

A. Yes, if they talked back or they wouldn't listen.

Q. All right. Not all the time. He wouldn't hit them, quote, "all the time."

A. He had a temper.

Q. Well, I'm trying to decide which it is now. Is it as you put it in your affidavit, that [213] "he would spank us

when we got into trouble," or is it, "He would hit them all the time"? Which is it?

A. When they got into mischief, trouble.

Q. Okay. You were aware that your brother was on trial back in 1988 for murder; right?

A. Yes.

Q. Did you read the newspaper accounts?

A. I don't get the newspaper.

Q. All right. Did you have any source of information as to what was going on on a day-by-day basis of that trial?

A. Yes, go out and get a paper, and I'd read it. I had to go out and buy my own paper.

Q. Okay. So you did follow it in the newspaper?

A. Right.

Q. And I take it there came a time when you saw from the paper that he had been found guilty?

A. Yes.

Q. And you were notified that the jury would then deliberate to decide whether he'd get murder or life in prison.

THE COURT: Get the death penalty or life in prison.

[214] BY MR. McINTYRE:

Q. I'm sorry, whether he would get the death penalty or life in prison.

A. Excuse me?

Q. Let me start over again. Okay.

Did there come a time when you were notified from the paper that a jury was going to go out and consider whether or not to give him the death penalty or life in prison?

A. I wasn't notified.

Q. You never saw that in the paper?

A. I saw it in the paper. I thought you meant was I notified.

Q. All right. Did you at that time, when you saw that in the paper –

A. Yes.

Q. – ever approach the defense lawyers for your brother and say that you had information about his childhood?

A. They never came to me about anything.

Q. Did you approach them?

A. No.

Q. All right. Did you call up any of your brothers and sisters?

A. We weren't close.

[215] Q. All right. Did you know that some of your brothers and sisters were attending the trial?

A. Yes, I knew that.

Q. Did you try to make any attempt to talk to them?

A. No.

MR. McINTYRE: All right. I have no further questions. Thank you.

THE WITNESS: You're welcome.

THE COURT: Mr. Wiseman, anything further?

MR. WISEMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. WISEMAN:

Q. When your brother's trial was going on, did your brothers and sisters know where you were living?

A. Yes, they knew where I was living.

Q. Now, Mr. McIntyre asked you about the statement that you filed or filled out, say, in 1995 in regard to these proceedings. May I ask you some questions about that? In that statement did you say, "Ron was always a different child. [216] He was normally very quiet. He always felt lost and rejected"? Was that true?

A. Yes.

Q. You said, "I believe Ron felt this way because of the way our parents raised us." Is that true?

A. Yes.

Q. Ron was the type of person who would sit by himself and say nothing." Is that true?

A. Yes.

Q. You go on to say that "Our parents would often fight. My dad would beat up my mom. I would try to protect her. My mother was an alcoholic, and a lot of the fighting and abuse stemmed from her drinking." Is that true?

A. Yes.

Q. You then go on to say, "Our parents were very strict. We were not allowed to date. The boys were often treated more harshly than the girls." Is that all true?

A. Yes.

Q. You say, "Our father had a temper, and he would spank us when we got into trouble." Was that true?

A. Yes.

[217] Q. Now, when Mr. McIntyre was asking you about whether he would spank you when you got into trouble or all the time, was it your recollection or is it your recollection that it seemed like the boys were getting into trouble a lot, very frequently?

MR. McINTYRE: Your Honor, that is so leading –

A. Yes.

MR. McINTYRE: – I have to put an objection on the record.

THE COURT: Yes. Sustained.

BY MR. WISEMAN:

Q. How often did your brothers get into trouble?

A. I'd say all the time.

Q. And, therefore, they were spanked all the time?

A. Yes.

MR. WISEMAN: Nothing further. Thank you.

THE COURT: All right.

THE WITNESS: You're welcome.

MR. McINTYRE: No questions.

THE COURT: All right. You [218] may step down, Mrs. Harris. Thank you.

THE WITNESS: Thank you.

THE COURT: All right. Counsel, how many more witnesses do you have?

MR. NOLAS: Well, your Honor, we were trying [sic] get Dr. Crown lined up for today but found that was not going to be possible. So we're talking to Mr. McIntyre. I know Mr. Wiseman's been talking to him. We're trying to sort it out for next week. My suggestion, since we're here anyway, that maybe your Honor can do what your Honor needs to do, and then we can all get together and sort of see where we are, where we're going, and try to work something out.

THE COURT: Do you have any more witnesses today?

MR. NOLAS: No. I'm sorry, no.

THE COURT: Okay. I just meant for today.

MR. NOLAS: I gave you the whole spiel, your Honor. I apologize.

THE COURT: I needed to know that, too.

MR. NOLAS: Sure.

[219] THE COURT: I just meant about today, if we should finish up today. Why don't we do this. We'll be in recess. I'll have you come back in chambers. We'll talk about that. Then I can go to my next matter.

MR. NOLAS: Sure, your Honor.

THE COURT: All right. Then we'll talk about scheduling, but we'll be in adjournment until further notice. I think it will probably be Wednesday morning, 8:30. But we'll talk about our schedule.

All right. We'll be in adjournment.

(The within matter was adjourned.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the hearing of the above cause and that this is a correct transcript of the same.

Date: 10/31/1996

/s/ [Illegible]
Official Court Reporter

The foregoing record of the proceedings upon the hearing of the above cause is hereby directed to be filed.

Date: October 31, 1996

/s/ [Illegible]
J.

COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	NO. 682/1988
Respondent	:	
vs.	:	
RONALD ROMPILLA,	:	
Petitioner	:	

TELEPHONE DEPOSITION
OF BARRY CROWN, Ph.D.

Taken in the offices of Slifer, Voice & Shade, 1228 Walnut Street, Allentown, Pennsylvania, on Tuesday, April 2, 1996, commencing at 9:00 a.m., before Sally A. Slifer, RMR, Registered Merit Reporter.

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[3] MR. WISEMAN: The record should reflect we are here for the deposition of Dr. Barry Crown in regard to post-conviction proceedings in the matter of Commonwealth versus Ronald Rompilla.

The parties previously agreed that objections to questions will be made during the course of the deposition. No objections will be reserved.

MR. McINTYRE: That's agreed.

BARRY CROWN, having been duly sworn, was examined and testified as follows:

* * *

DIRECT EXAMINATION ON QUALIFICATIONS

BY MR. WISEMAN:

Q. Dr. Crown, could you tell us what you do for a living?

A. I am a psychologist. I limit my practice to the areas of clinical and forensic psychology and neuropsychology.

Q. And tell us what your educational background is?

A. I received my bachelor's degree from the University of Miami. Master's degree from Florida Atlantic University. My Ph.D. from Florida State University in 1969.

[4] Following that I was a National Institute of Mental Health post-doctoral fellow in clinical psychology at Harvard Medical School, Massachusetts General Hospital.

MR. McINTYRE: Can't we stipulate to his qualifications based on his resume here?

MR. WISEMAN: We can. Let me get a couple points out.

Q. We will do the abbreviated version of your qualifications, Doctor.

Do you have any experience with regard to child abuse?

A. Yes, I do. I was the codirector of the child abuse project at the University of Miami School of Medicine and Jackson Memorial Hospital, which is the county facility here in the Miami area.

At that time, in addition, I was an assistant professor of pediatrics at the University of Miami School of Medicine, with responsibilities for teaching pediatric residents about child abuse.

Q. Just a few questions about your forensic background. Have you testified in the past in capital matters?

A. Yes, I have.

[5] Q. And have you been retained as an expert in capital matters?

A. Yes.

Q. Would that be both for prosecution and the defense?

A. That's correct.

Q. Have you worked as an expert in civil matters?

A. Yes, I have.

Q. Have you worked in state court?

A. Yes.

Q. And in federal court?

A. Yes, I have.

Q. And you have been qualified, I take it, in those courts?

A. Yes, I have. In addition I am a certified forensic evaluator pursuant to Florida statute.

Q. Have you been qualified in the past in Pennsylvania as an expert?

A. Yes.

Q. Has there been an occasion which you have not been granted qualifications as an expert?

A. No, there hasn't.

MR. WISEMAN: Based on the [6] doctor's testimony, and on the stipulation, I would offer Dr. Crown as an expert in psychology, neuropsychology and child abuse.

MR. McINTYRE: I have no questions and agree. I will have some interest, quote, unquote, questions later on.

MR. WISEMAN: Okay.

* * *

DIRECT EXAMINATION

BY MR. WISEMAN:

Q. Doctor, did you have an opportunity to evaluate Ronald Rompilla?

A. Yes.

Q. Did you reach any conclusions with regard to Mr. Rompilla?

A. Yes, I did.

Q. We will get to those conclusions in a while, but were your conclusions reached to a reasonable degree of psychological and neuropsychological certainty?

A. Yes, they were.

Q. I want to talk for a while about what went into your evaluation and the records and things – the records you reviewed and the things you did.

[7] What records did you look at, Doctor?

A. I reviewed a fairly large stack. That includes Mr. Rompilla's educational records related to his early schooling. I have reviewed his packet of materials including medical materials from the Commonwealth of Pennsylvania, Bureau of Corrections. I have also reviewed other medical records relating to his early life, and I have reviewed various reports included within that packet from the consulting psychiatrist at the facility.

Q. Would be that Kate Erwin?

A. Yes. I have also had an opportunity to review some writings of Mr. Rompilla in recent years, and I have also had an opportunity to review documents related to his 1988 trial, some trial testimony.

Q. Let me ask you some specific questions about the documents you looked at.

The Department of Corrections records you indicated that had a medical – there was some medical records in there.

Were there any mental health records in that?

A. Yes, by other records I am referring to [8] mental health records.

Q. Did you also have occasion to review a 1976 transfer petition from the Department of Corrections?

A. Yes.

Q. Did you review any declarations from Mr. Rompilla's family?

A. Yes, I did.

Q. Did you have occasion to review the opinion of the Pennsylvania Supreme Court in regard to Mr. Rompilla's conviction?

A. Yes, I have.

MR. WISEMAN: So the record is clear, Mr. McIntyre, I want to – it's a little awkward because I can't show the witness the records he's referring to. To the extent we can, I would like to clarify, if I could, the records that he's referring to.

Q. The medical records from Mr. Rompilla's earlier life you reviewed, would that have been an entry to when he was about two years old?

A. That's correct.

Q. For the record, those are the medical records that were entered at the hearing before Judge Wallitsch as Defendant's Exhibit 9.

[9] The 1976 transfer petition, is that the document that contains an MMPI, a WRAT, W-R-A-T, score among other information?

A. Yes.

Q. For the record, that was admitted before Judge Wallitsch as Defendant's 7.

Now, you reviewed certain family declarations, is that right?

A. That's correct.

Q. For the record, would that have been declarations by Barbara Harris, dated 11/29/95? Are you there, Doctor?

A. Yes, I am.

Q. Did you hear the question?

A. Yes, Barbara Harris, yes, 11/29/95.

Q. And did you review a declaration by Darlene Rompilla dated 12/3/95?

A. Yes.

Q. Did you review a declaration of Nicholas Rompilla, Jr., dated 11/29/95?

A. Yes, I did.

MR. WISEMAN: For purposes of this deposition, I would like to have the declaration of Darlene Rompilla marked as Defendant's Exhibit 1.

The record should reflect these [10] are copies of the signed declarations that are next to the petition. I would like to have Darlene Rompilla marked as Exhibit 1, Barbara Harris' as Exhibit 2 and Nicholas Rompilla's declaration marked as Exhibit 3.

Q. The school records you reviewed, are those approximately a three-page record that contains a variety of IQ testing from the mid to late '50's and 1960's in regard to Mr. Rompilla?

A. That's correct, when he was a youngster.

MR. WISEMAN: For the record those were previously marked before Judge Wallitsch as Defendant's 8.

MR. McINTYRE: MD 5 is the longer version.

MR. WISEMAN: Right. The reason is I think your colleague required to bring a custodian, we marked them previously. The custodian came in and presented us with the authenticated records which I believe we substituted for the earlier –

MR. McINTYRE: D-8 is the three one you referred to?

MR. WISEMAN: No, D-8 has the additional pages.

[11] MR. McINTYRE: D-8 has all the other –

MR. WISEMAN: The D-8 exhibit contained a breakdown of the IQ test scores themselves.

Q. Doctor, in addition to the documents you reviewed, did your evaluation contain any other components?

MR. McINTYRE: Let me stop you for a second. Could you make clear what he had. Did he have just the three pages or did he have the whole thing?

BY MR. WISEMAN:

Q. The school records you had, is that a three-page document or is it a larger document?

A. The school records that I have are a limited set of materials that – student health records which are actually prior to the education packet of nine pages. Then there's the cumulative record which is two pages and then a small photograph.

MR. McINTYRE: It looks like he had them all.

MR. WISEMAN: He had these two, the health records –

[12] MR. McINTYRE: And these.

MR. WISEMAN: The WISC record form which is what was added.

Q. I was asking if there was any other component to your evaluation?

A. I did test and examine him using neuropsychological testing procedures.

Q. Was there any type of interview done with Mr. Rompilla?

A. That included both interview and formal testing.

Q. Doctor, generally, what is brain damage?

A. Brain damage is very simply a problem in the brain where it is not operating at full capacity.

Q. Is that an organic problem?

A. It is an organic problem. It may be caused by disease or by trauma.

Q. By trauma, what do you mean?

A. I mean some sort of insult, such as a blow, such as poor nutritional exposure, and so on.

Q. What impact, if any, does brain damage have upon a person's personality and function?

A. It gives them limited reserve, meaning that they have very little to fall back on. They [13] most often tend to misconstrue things.

By analogy it's very similar to someone who may be very good at playing darts. Something happens to them and no matter how hard they try, they just can't hit the bull's eye.

Q. Does brain damage have any impact on emotional lability?

A. It has an effect on emotional responsiveness because the individual misconstrues but also misconstrues his own expressions.

Q. Does it have any impact on impulse control?

A. Depending on the location of the damage, the brain controls impulse oriented behavior. As a result of an impairment, impulse control can be severely impaired.

Q. Does it have an impact upon reasoning?

A. It has a significant impact on both reasoning and judgment.

Q. And can you explain?

A. The primary executive functions of the brain are reasoning, judgment, and mental flexibility, the ability to shift smoothly from one idea to another.

As a result of brain damage, those [14] functions may be inoperable or significantly impaired.

Q. Does it have any impact on one's ability to measure future consequences?

A. Depending on the areas that may be impaired or damaged, it may have an effect on the ability to determine the long-term consequences of immediate behavior, yes.

Q. Does it have an impact on cognition?

A. Yes, in the broadest terms, since cognition involves both reasoning and thinking, yes.

Q. Does it have an impact on one's ability to control their behavior?

A. Yes, it does.

Q. And can you explain that?

A. It has an effect on the ability to control because control mechanisms involve reasoning, judgment, and understanding the consequences of one's behavior. In addition, speech and speech patterns may be adjusted and the individual may also misconstrue relationships with others.

Q. Now, Doctor, the potential impacts of brain damage on a person's personality and function that you just went through, is this a new science or [15] a science that's been established for a period of time?

A. This is a science that has been established for many years. Knowledge about the brain and interests of the brain of course goes back well into the period of the introduction of modern medicine in the 1800's.

The interest in neuropsychology and the relationship between brain function and behavior had their origin in dealing with war veterans after World War I and World War II who had suffered head traumas.

So the interest in it has been great and it has been supported, of course, by the federal government.

Q. In particular, the types of impact that brain damage have on a person that you just went through, was that known in 1988?

A. Most certainly.

Q. Now, Doctor, I would like to direct your attention in particular to the testing that you gave to Mr. Rompilla and ask you if you could describe the testing and which tests, if any, he showed clinically significant impairments?

A. Certainly. To start with I administered [16] a test of auditory selective attention. Auditory selective attention is the ability to attend or pay attention to something when there are deliberate distractions.

In real life these are things that occur because of a noise, such as a noisy fan, noise in conversations, such as conversation that might be going on in a busy lunchroom or coffee shop during lunch hour, and also the possibility of someone giving a lecture or a speech. The person is exposed to situations such as this and asked to respond to various things.

Before they are distracted, they are asked to do all the responses without distractions. In Mr. Rompilla's case, I administered the test without distraction and he was able to perform at the 100 percent level.

But when I introduced distractions, he failed depending on the type of distraction to between the first and sixth percentile for a total score placing him at the first percentile which translates statistically into an age equivalency of attending at the age level of someone who would be about 82 years old.

Q. Now, Doctor, just if you could clarify [17] what you mean by percentile?

A. By percentile, very roughly when I say that someone is functioning at the first percentile, what I mean is that 99 out of 100 people can do it better than he can.

If I am referring to the fourth percentile, I am saying that 96 out of 100 people would be more able to perform in a higher level than he could.

Q. When you say that he scored at an age range of about 82 years old, could you explain what the significance is of that scoring?

A. The significance is that in the normative standards of this diagnostic test, looking at statistically normal behavior, it is at the level due to degenerative processes that we would expect a relatively normal, 82 year old to be able to perform and attend, since there are basic degenerative processes that occur in brain function as we age.

Q. Doctor, if at all, does the impairment in this test relate to any of the impact on Mr. Rompilla's function?

A. In terms of his function, he has a great deal of difficulty paying attention to something. In simple terms concentrating on it in laymen's [18] terms, while other things may be going on, being able to carry on a conversation when someone happens to pass by and says something, being able to focus on something when a car backfires or someone drops a book, it's very difficult for him to stay focused on very simply what he ought to be paying attention to.

Q. Now, when I was asking you about brain damage generally, and you went through a list of things that it could impact upon, such as emotional lability, impulse control, reasoning, judgment; does this test have any impact on any of those functions?

A. Yes, it does. It affects impulsivity. It also affects reasoning and judgment.

Specifically because the individual with this type of impairment and deficit is not able to follow something to point A to point B to point C to point D. They may be focusing on point A, and then have to very rapidly eliminate point B and C in order to get to D which may be an outcome which results in an impulsive response.

Q. Could you discuss the next test, Doctor?

A. The next test that was administered was the abstraction section of the Shipley Institute of Living Scale.

This is a test of the ability to [19] engage in abstract problem solving and to engage in language based critical thinking, meaning being able to use language to figure things out. It's what all people do. It's what we begin to learn to do in school when we are roughly about seven

years old when we start to explain things more specifically in language rather than action.

And in that test, Mr. Rompilla scored at an age equivalency of eight years, nine months. So his performance level on this test was very simply the equivalent of someone who is under the age of nine years old, someone who was about at the third or fourth grade level.

Q. And how does this – how does – I take it you consider him impaired in this test?

A. Yes, he would be significantly impaired here.

Q. How does someone with this impairment affected in their lives?

A. In very simple laymen's terms it means he has a great deal of difficulty figuring things out, making sense out of experience.

Q. As far as its impact on his personality, how would it impact?

A. It impacts because of not having the [20] ability to think things through, to reason, he's very likely to reach faulty conclusions, very likely to be pressured by others to reach conclusions and very likely to act impulsively.

Q. Could you discuss your next test, Doctor?

A. The next test was the category test. The category test tests the ability to learn something new and then to be able to apply it in a problem solving situation.

It relies not on verbal activity, not in terms of language, but in terms of relatively simple symbols. There, without the use of language, control of language, he

reaches a percentile rank equivalent of 76 percentile rank equivalent is the opposite of a percentile.

Meaning that in this situation roughly three-quarters of the people taking this test would be able to do a better job than Mr. Rompilla. So he is in deed [sic] significantly impaired even when language is not included.

Q. You said is not included?

A. Right, language is not included. So if – and there were in my mind questions about whether his performance aspects were totally based [21] on language, this test was administered to demonstrate his impairments exist even when language is not important.

Q. Why is that important to know?

A. It's important because we know based on that brain configuration, language activities are primarily in the left hemisphere of the brain, and nonlanguage activities are primarily in the right hemisphere of the brain.

This explains then that what we are looking at is something technically called a bilateral impairment. An impairment that not only impinges on the dominant left language based hemisphere but also on the nondominant, nonlanguage based hemisphere.

Q. And does the bilateral nature of the damage bear on the relevance to the damages impact on Mr. Rompilla's personality and function?

A. Yes, it does. Because it also strongly indicates there are transfer problems between the two hemispheres; in a sense in laymen's terms, information gets shunted back and forth through a tunnel called the corpus callosum, which is a

connecting mechanism between the two hemispheres of the brain, one dealing with nonverbal information, [22] the other dealing with verbal information.

When there's a bilateral problem it means that both verbal and nonverbal information is having difficulty being transferred between the two hemispheres.

In simple terms then, if someone with this type of problem sees the situation, which is a nonverbal, visual situation and then attempts to make sense out of it, that visual image is absorbed and processed initially in the right hemisphere of the brain.

It's transferred through the corpus callosum to the left hemisphere in order to attach language based explanation to it.

With this type of deficit, the transfer becomes a problem so that the actual interpretation in terms of language is very often faulty.

Q. What impact, if any, does his impairment in these areas have on lability, impulse control, reasoning, judgment, ability to predict future consequences of his action?

A. In very simple terms, it short circuits the process because he is unable to logically move through the sequences necessary to arrive at a [23] reasoned response, so instead is most likely to exhibit impulsive behavior and impulsive responsiveness.

In addition, in terms of language, he's most likely to engage in confabulation, which is the nonvoluntary filling in of missing information in order to arrive at something that makes sense to the person.

Q. Could you discuss the next test that you administered?

A. Certainly. I administered the Wisconsin card sorting test. This is a test that is specifically linked to frontal lobe functioning.

In Mr. Rompilla's case, he exhibits a great deal of perseverative behavior, meaning he is most likely to endorse items even when he's told they are wrong and is unable to once again switch gears in order to search for the correct response.

This is a deficit. This is an impairment. This is a form of organic brain damage that is specifically linked to the frontal lobes.

The frontal lobes of the brain are where executive functions are organized and monitored, it's the site or reasoning and judgment [24] and conceptual flexibility.

Q. What is executive functions, Doctor?

A. Executive functions are those aspects of brain function that control our generalized behavior; our reasoning, our judgment, our attempts to make sense out of things around us, our ability to accept the long-term consequences of immediate behavior and also to monitor and assess our own conduct.

Q. How did he score on that test?

A. He scored at the perseverative level and that places him at the fifth percentile meaning that 95 out of 100 people would be able to do it better than he.

Q. I take it that's an impaired level?

A. That is a significant impairment, yes.

Q. Could you discuss your next test?

A. I administered the revision three of the wide range achievement test. This is a test that correlates with grade equivalencies and tests reading ability, spelling ability, and arithmetic manipulation, arithmetic.

Q. How did he score on that?

A. In terms of grade equivalencies, in reading, he was reading at the fourth grade level.

[25] In spelling, being able to perform at the sixth grade level, and in terms of arithmetic, performing at the fifth grade level.

Q. And did you consider his performance on that test to be within normal limits?

A. It is impaired. Clearly he had, by history, gone as far as the ninth grade. He had missed the GED, had failed it, but nonetheless, it. [sic] is impaired functioning.

Q. Did you administer a test called the trails A and B?

A. Yes, I did.

Q. Could you describe that test?

A. The trail making test involves following a sequence of numbers through a logical conclusion and then involves following alternating sequence of numbers and letters; numbers and the alphabet to a logical conclusion.

Q. What does that test measure?

A. It measures concentration, attention, and mental flexibility which are of course related to executive functions and frontal lobe behavior.

Q. And how did he score on that test?

A. He was impaired on form A and he was significantly impaired on the slightly more [26] difficult form B.

So he was impaired on both concentration, attention and mental flexibility.

Q. You said it measured executive function, relating to reasoning, judgment, and ability to measure long term consequences?

A. Well, this test particularly is concentration, attention, and mental flexibility, which is the ability to shift smoothly from one idea to another.

If you can't shift smoothly, you become fixated on a particular idea or closed option, and as a result reasoning and judgment are impaired, yes.

Q. What other test did you administer?

A. I administered the Luria Christensen memory test, which is a broad range test of memory involving both nonverbal and verbal aspects.

In both verbal and nonverbal aspects, Mr. Rompilla was in the impaired range, even when it was corrected for age and education.

Q. And what's the significance of those impairments?

A. It means very simply that he can't store information and then be able to retrieve it in a [27] logical and consistent manner.

Q. What impact does that have on his personality and function?

A. Being relatively confused in terms of stored information and having a great deal of difficulty in retrieving it, once again he's very likely to reach faulty conclusions and act impulsively.

Q. Was there any other significant testing that you administered?

A. Yes. I administered another set of nonverbal memory once again to eliminate all possibilities for language. That was the Rey-Osterrieth, R-E-Y, dash, O-S-T-E-R-R-I-E-T-H, complex figure test.

On this test, he once again fell within the significantly impaired range.

Q. And what does this test measure?

A. This is a test of nonverbal memory and recall, meaning that language is not involved.

Q. And again, what impact does his impairment on that test have on his personality and function?

A. It indicates he has a great deal of difficulty recalling and integrating information, [28] being able to exercise nonverbal memory and reasoning, being able to exercise nonverbal concentration and attention capacities.

It represents the analog, the equivalent of his verbal impairment but on a nonverbal basis controlling for language.

Q. Were there any other significant testing?

A. Yes, there was, I remember the right hand Indiana aphasia screening test.

Q. What does that measure?

A. It's a global screening test developed shortly after World War II as a mechanism for screening veterans, who might have neurologic and neuropsychologic impairment. It tests both executive function and various constructional and language capacities.

Mr. Rompilla's impairments were significant. They indicate a severe impairment, particularly in areas of construction and language capacities.

Q. And how is his impairment on that – what's the clinical significance of his impairment on that instrument?

A. The clinical significance is that even [29] when given simple tasks, he has a great deal of difficulty. He has impairment, not only with complex tasks, but also with relatively simple tasks.

Q. What impact does that have on function and personality?

A. In terms of function, once again it indicates he would have – he would have a great deal of difficulty with both simple and complex functions.

Q. What's the – were there any other significant tests you administered?

A. No, that covers the groundwork. Although I gave aspects also of the Wechsler Adult Intelligence Scale Revised in order to compare to Shipley performance.

I was particularly interested in the similarities subtest of the Wechsler Adult Intelligence Scale Revised and there he scored a scale score of three.

A scale score of three, reflects a percentile equivalent for Mr. Rompilla's age range of just under the second percentile. And that's a specific test for stored information that's used for reasoning and judgment.

[30] Q. And what was the significance of his score on that test?

A. Placing him at the – just under the second percentile statistically. It's somewhat equivalent to the Shipley abstraction score of eight years, nine months.

Q. Were there any other significant tests, Doctor, that you administered?

A. No.

Q. Now, when you administered the test, do you have any way of measuring the validity of the test?

A. They are measured clinically by the internal consistency of the test battery and the test responses.

The research literature indicates that even a Ph.D. trained psychologist cannot successfully fake a battery of neuropsychological tests. It may be possible to fake a test, but not a battery. That's why I gave a number of tests. The internal consistency of these tests indicates that there are no indications of malingering or faking.

Q. In Mr. Rompilla's case that is?

A. That's correct.

Q. Now, we'll talk in a while about other [31] background information regarding Mr. Rompilla, but let me just ask you at this point, were the results on this – of these batteries of tests consistent with other known information about Mr. Rompilla and with his history?

A. Yes.

Q. Could you explain what learning disability is?

A. Learning disability is simply a problem in absorbing and processing new information. It's an awareness problem.

Q. Is learning disability a function of brain damage?

A. Yes.

Q. And did you reach any conclusions as to whether or not Mr. Rompilla is learning disabled?

A. He is learning disabled as a result of his brain damage, yes.

Q. Now, I want to talk specifically about some of the records you reviewed regarding Mr. Rompilla. Why don't we start with the school records.

What significance, if any, did you find in regard to the IQ testing administered in April of 1957, October '59 and again in December of [32] '61?

A. Those test scores show a – first a great deal of consistency. And in addition, they place him within the bounds of mental retardation. I am looking at the WISC score from October of 1959, with a full scale of 64.

Q. What is the statistical cut off for mental retardation?

A. In 1959 the cut off was 69. That was changed approximately four years ago. The cut off is now 74. In any event, he would have fallen within that range.

Q. And how about in regard to the testing in December of '61?

A. December of '61, the achievement test placed him, again, at a consistent – consistently low, low level. Language at 3, arithmetic at 3.5, spelling at 4.1.

Q. I am referring to the WISC score on the next page of the exhibit, Doctor, 12/61 on the bottom of the page towards the left.

A. That 12/61 WISC score gave him a full scale IQ of 69. Again that would be the beginning of the retarded level. So he would have met the criteria for mental retardation at that time.

[33] Q. Referring you to the WISC test of 10/59, there's an indication of a verbal of 61 and performance at 75.

Is there any significance to that disparity?

A. There's a 14 point difference. Technically a 15 point difference is needed for a statistically comparable disparity. His nonlanguage based functioning seems to be better than the language based functioning. That's what is expressed throughout.

Q. Now, is there any significance in your view that he scored in these ranges between 1957 and 1961?

A. I don't understand your question.

Q. Well, is there any significance to the fact that he didn't score in the retarded range on just one test but that he scored in that range on a number of tests over a period of approximately four and a half years?

A. Certainly repeated measures certainly with consistent scores confirm the impairment. There's no – there's no way that a naive subject, a child, can fake performance on a test such as the Wechsler. And this consistency from administration [34] to administration certainly confirms the diagnostic impression.

Q. Now, you had started to discuss, I think, the entry of 6/61 which has the notation stan. ach.

Did you take that to mean standard achievement?

A. Yes.

Q. The scores that follow that, of what significance are they?

A. They show that he's functioning at a consistently low level.

Q. In particular, the reading at 3.3, spelling at 4.1, arithmetic 3.5, those refer to grade levels?

A. Yes; language 3.0.

Q. Language 3.0. Thank you. Were those scores consistent with the achievement scores you administered in 1995?

A. They were consistent in that they show a modest degree of maturation and then very quick plateauing. Mr. Rompilla as a child appeared to plateau at an early age; meaning that that was as good as he was going to get.

Q. During – when you evaluate someone who [35] has consistent IQ scoring in the retarded range, what types of things does that cause you to look into or investigate further, what do you look for then?

A. I am looking for positive factors and also for consistency and also for an explanation.

Q. Where do you look for that explanation in the causative factor, what do you look at?

A. I look at history, and also at the pattern of performance because the pattern of performance across a battery is most often indicative of some type of relationship factor.

Q. What can cause someone to score in the retarded range?

A. Certainly genetics, perinatal problems, neonatal problems, neural developmental problems, external trauma, exposure to disease entities, nutritional deficits at an early age,

Q. It would be fair to say that some of the causes can be environmental?

A. Yes, exposure to lead, the lead-based paint, exposure to lead from old plumbing, from lead piping.

Q. Do you look to see if there are any types of emotional interferences with a patient's [36] ability to score well in such testing?

A. Yes.

Q. Would that include in the case of a child an abusive or dysfunctional family life?

A. Yes, it would.

Q. Why is that, what impact does a dysfunctional or abusive family life have on child's scoring, on an IQ test?

A. It has an impact because it may serve as an external emotional factor in affecting concentration and attention, but also it may evoke problems of trust, problems of being able to communicate out of fear of failure, and as a result of failure being abused.

Q. And are those things, trust and a fear to communicate, are those types of behaviors that abused children frequently display in your experience?

A. Yes, they do. They are more apt to be in agreement. They are more apt to not challenge. They are more apt to give in.

Q. Before we leave the school records, did you see a notation on the school records regarding special education classes?

A. Yes, I believe that there are some [37] notations. Although, it's hard to read.

Q. Now, in particular, drawing your attention to the year '57 through '58 down to '60 to '61 there's a notation of SP under the grade category?

A. Yes.

Q. Are those the notations you are referring to?

A. Yes. That I assume refers to special education and certainly can't reflect spelling.

Q. Is there a correlation, in your experience, between children who do poorly in IQ testing and their placement in special education classes?

A. IQ testing is the basis for special education placement.

In addition, it's likely that someone with this score would be placed at that level. And in addition, for special education placement, the school systems receive additional funding from the federal government.

Q. Is there a correlation between placement in special education and an abusive or dysfunctional family life?

A. It is certainly likely or more likely [38] and probable that someone going through an abusive situation would not be able to keep up with his age mate peers and in schooling would wind up in special education.

Also he was placed in special education beginning at what must have been the fourth grade level. In terms of brain development, that's the time of the secondary development of the frontal lobe.

So he was exhibiting frontal – the precursors to frontal lobe deficits even by school measures at that time, which would have been '57, '58.

Q. If you could now turn to the medical records you looked at.

What interpretation did you have of the medical record from when Mr. Rompilla was two years old?

A. He had some severe gastrointestinal and problems with diarrhea, holding foods, which suggested a significant problem, significant enough for him to be seen at Sacred Heart Hospital.

Q. Did you notice anything in regard to a fever?

A. He had a high fever, going up to spikes [39] of 105.

Q. Taking the fever in conjunction with the diarrhea and the admission caused by them, what significance, if any, did you find in those facts?

A. I thought it was interesting. The diarrhea causing the hospitalization would have to have affected his nutritional balance and particularly the electrolytic balance.

The electrolytic balance is what controls the operation of the nervous system, particularly within the brain. That provides the, in a sense, the fuel for the brain to operate.

Apparently there was an impairment and to that extent, it appears that – today there's a common term – nutritional marasmus would have taken place.

In addition the fever going up to 105 at the same time would also have had an effect on that developing nervous system. We know that children who experience high fevers very well may develop problems concerning brain function and behavior.

Q. And that would be children at the age of two or different ages?

A. Children in infancy, children under the [40] age of three, particularly, and that's the most vulnerable period.

Q. Was that hospital admission, and the facts apparent from the medical record, are those consistent with your test findings and consistent with the school records that you viewed?

A. Yes, they are.

Q. In what way?

A. They provide at least one explanation for his poor performance and also for his ultimate scoring on neuropsychological and psychological testing at impaired levels.

Q. Now, I would like to turn your attention to the – what we have been calling the 1976 transfer petition. That's the document that has achievement test scores and MMPI score on it.

What significance, if any, did you find in his performance on the wide range achievement test that was administered, apparently, on October 24th of '75?

A. I am having some difficulty finding that. I unfortunately had dropped the one packet, and as you know all the papers look the same after awhile.

(Brief recess was had.)

[41] Q. Did you find the material?

A. The only materials I have from the 1970's from the Commonwealth of Pennsylvania are a large stack of misconduct reports.

I have a 1988 –

Q. No. Why don't we read to you the results and ask you your views of them.

The document I am referring to has a section on test status summary. It has a WRAT that was administered on 10/24/75, a reading score in the 32nd percentile, spelling score in the 4th percentile, and arithmetic score in the 3rd percentile.

What significance, if any, do you attach to those scores?

A. Those represent significant impairment and consistent with the earlier IQ scores and with the neuropsychological testing.

Q. You had this material, by the way, at the time of your evaluation of Mr. Rompilla?

A. Yes.

Q. Now, that same document has an MMPI administered on 10/15/75 which you refer to in your declaration.

Do you remember that?

[42] A. Yes, I do.

Q. Of what significance, if any, did you attach to those MMPI scores?

A. That Mr. Rompilla manifested personality deficits also.

Q. Since you don't have the document in front of you, let me ask you a couple of questions from your declaration.

In your declaration you refer to an MMPI handbook by Dahlstrom, Welsh and Dalhstrom?

A. Yes.

Q. You say the MMPI scores according to Dahlstrom, and MMPI score such as that achieved by Mr. Rompilla are present in patients who are unpredictable, impulsive and tend toward a schizoid personality who live nomadic lives and in social isolation.

Are those descriptions of that MMPI profile applicable in your view toward Mr. Rompilla's personality?

A. Yes, most definitely.

Q. Which ones in particular, or all of them?

A. All of them, particularly the impulsivity and the – in terms of schizoid affect, [43] schizoid meaning difficulty in making sense out of reality and that is a distinction between schizoid ideation, and schizophrenia.

But certainly as I explained from a neuropsychological perspective. He has a great deal of difficulty making sense out of experience, most likely often to go from A to D eliminating B and C, and so on.

Q. Doctor, in particular, the scale six on that test, the paranoia scale is at 82 and schizophrenia scale score 8 is at 90; what significance do you attach to those scores?

A. Again as well as reflecting lack of trust, which developed very early, it expresses a basic problem within the personality and a great deal of difficulty figuring things out leading to faulty conclusions and prematurely being suspicious.

Q. Let me go back to the wide range achievements testing, are those percentile rankings consistent with a learning disability?

A. They are consistent with a learning disability, yes.

Q. In Mr. Rompilla's case are they consistent with such a disability?

A. They are consistent, yes, with a [44] learning disability and with organic brain damage.

Q. Now, that same document has a Beta, B-E-T-A, IQ score of 93 also achieved in October of '75

Of what significance is the Beta score of 93?

A. The Beta score – the Beta test is a relatively simple, quick screening test that tends to produce a score roughly between 15 and 20 points higher than the Wechsler individually administered test.

Q. The Wechsler would be the version that Mr. Rompilla scored in the retarded range as a child?

A. That's correct.

Q. Can you see in the DOC materials a later Wechsler that was administered I think in 1988?

A. Yes, I did.

Q. Do you remember what that score was?

A. It was reported as a WAIS score of 79 placing him within the borderline range of mental ability.

Q. So do I understand you to say then that that score of 79 administered by the DOC test is consistent with the Beta score of 93?

[45] A. Yes.

Q. Is the Beta test a full score IQ test or does it have only a performance portion?

A. It only has a performance portion. It's used for rapid screening and classification and not as a mental health instrument.

Q. In Mr. Rompilla's case, did he have some history of scoring better on the performance than on the verbal portions of the full IQ-scale testing?

A. Yes, he did, even going back to his scores in 1957, 1959, he tended to score higher on performance. In fact in 1959 he scored 14 points higher on performance than he did on the verbal portion.

Q. A moment ago you referred to borderline functioning. When you say borderline, were you referring to borderline mental retardation?

A. I was referring to borderline mental retardation, yes.

Q. Now, you indicated earlier that you reviewed the declarations which have been marked in this case of three family members.

In what respect did you find those declarations to have clinically significant information?

[46] A. They were significant in that they paint a picture of a dysfunctional childhood, a dysfunctional life in a relatively large family where there was a great deal of dysfunction in terms of the interaction between the parents and the interactions between the parents and the children, and the interactions between the children themselves.

Q. And if you could provide a little more detail regarding what you mean by dysfunction?

A. There was alcohol use. There was, as I recall, there was also a great deal of physical abuse in terms of punishment, in terms of rule enforcement, in terms of rule

making and in terms of just the general management of the family unit.

Q. Now, when you say alcohol use, is any alcohol use in the family a sign of dysfunction?

A. No. This was extreme alcohol use and Mr. Rompilla himself describes himself as an alcoholic and is very clear where that behavior was learned.

Q. Now, in regard to Mr. Rompilla's mother's use of alcohol as reflected in the declarations, what significance does that have?

A. Her use of alcohol certainly strongly [47] suggests another causative factor in his low test scoring and his neuropsychological impairments. And that is that Mr. Rompilla, in terms of even his physical features, would meet diagnostic criteria for fetal alcohol syndrome.

Q. Of what clinical significance is fetal alcohol syndrome, what is fetal alcohol – what effects does it have on the developing fetus and subsequently on the child?

A. Fetal alcohol syndrome is related to mother's exposure and use of alcohol during pregnancy.

Children who manifest the syndrome tend to have borderline to full level mentally retarded Wechsler scores and performance. They tend to have neuropsychological impairment which are bilateral. They tend to have a great deal of difficulty in dealing with reasoning and judgment. They tend to be impulsive and they also tend to have certain facial characteristics in terms of wide-set eyes.

Q. In regard to the bilateral impairments, impairments of reasoning, judgment and impulsivity, those were

all deficits you found in Mr. Rompilla based on your testing?

[48] A. Yes. Mother's use of alcohol and then Mr. Rompilla as a child, high fevers requiring hospitalization as well as some significant nutritional marasmus would certainly explain much of his behavior.

Q. Did you make any findings with regard to head injury in Mr. Rompilla's case?

A. Yes, he has a history of loss of consciousness. He has a history of a left frontal injury. In fact, there's a scar in the left frontal area of his head.

Q. Let me ask you about that scar. There's been some issue in other proceedings in this litigation as to whether that scar was a laceration or was the result of a more substantial head injury.

Did you draw any conclusion in regard to that issue?

MR. McINTYRE: Note my objection to his qualifications in the medical area. He's not a medical doctor.

Q. In your work as a neuropsychologist, are you called upon to assess routinely the impact of head trauma?

A. Yes, I am.

Q. Its impact particularly on [49] neuropsychological development and function?

A. Yes.

MR. WISEMAN: I would obviously disagree with your objection.

MR. McINTYRE: Nevertheless, it stays.

Q. Doctor, did you make any findings with regard to the nature of the injury of Mr. Rompilla over Mr. Rompilla's left brow?

A. Yes, I believe it's reflective of a left fronto-orbital syndrome.

Q. Why do you say that?

A. Meaning the nature of the healed wound site in of itself indicates there was a blow. He explained that there was loss of consciousness, that he did go to the hospital, and given some findings on the neuropsychological tests, this is an indicator that is consistent with those findings.

Q. Did you review a Department of Corrections document dated November 8th, 1988?

A. Yes, I did.

Q. And did that speak to the head injury at all?

A. It notes that he has a scar above the left eye. I am not sure of which document you are [50] referring to. I am looking at a medical note.

MR. McINTYRE: Can we stop for a moment. I am not sure either, is this something that's in evidence?

MR. WISEMAN: Yes. That was marked – one page document marked Defendant's 12 Department of Corrections medical entry from 11/8/88 noting, among other things, a scar above the left eyebrow.

MR. McINTYRE: Can I see it?

MR. WISEMAN: I don't have it with me in the room.

MR. McINTYRE: I certainly want to see it.

THE WITNESS: That was the note I was referring to.

(Discussion off the record.)

MR. WISEMAN: Why don't we mark the previously marked declarations consistently with the hearing exhibits, so that would make the declaration of Darlene Rompilla Defendant's 13, Barbara Harris Defendant's 14, Nicholas Rompilla, Jr. Defendant's 15, and the one-page Department of Corrections record that's been marked, let's mark that as Deposition Exhibit Number 1.

[51] (Crown Deposition Exhibit Number 1 and Defendant's Exhibits 13 through 15 were marked for identification.)

Q. In any event, now that we found the document that you have been just discussing, you reviewed a Department of Corrections document of 11/8/88 in regard to any visible scars, is that right?

A. Yes.

Q. And what did you see on that document?

A. Scars on the right upper lip and above the left eye.

Q. Doctor, did you reach any conclusion or do you have any view regarding the duration of Mr. Rompilla's organic impairments?

A. Yes, I believe that his organic impairments originated early on, perhaps in utero because of fetal alcohol syndrome, perinatal and neural developmentally and certainly before the secondary aspects of the precursors to the frontal lobes were in the process of developing; what I am saying, they occurred early on.

Q. Earlier this morning, you discussed the effects generally of brain damage upon behavior and then you more specifically related them to Mr. [52] Rompilla.

I wanted to ask you if these effects on impulsivity, lack of judgment, and inability to judge the future consequences of your immediate behavior, do those effects increase if the person is drinking alcohol?

A. Yes, alcohol exacerbates the problems and the impairments.

Q. In your declaration, you refer to the effects of these types of organic impairments increasing under stress?

A. Yes.

Q. I wanted to ask you in particular, the record shows Mr. Rompilla was arrested approximately three months after being released from prison from approximately a fourteen-year incarceration.

Is that something you would consider to be a stressor in your use of the word in your declaration?

A. Certainly.

Q. And could you explain that?

A. Yes. Reorienting yourself to the outside world after fourteen years of confinement is a highly stressful situation, particularly for someone who has very little, if nothing, in terms of [53] reserve and in terms of ability to deal with and figure out the world around him.

Q. Some of the testing that you discussed earlier, Mr. Rompilla had a difficult time in processing information, in – is that type of impairment something that would have an impact upon someone just released from prison?

A. Yes, it would.

Q. Could you elaborate on that?

A. He would have a problem because being re-exposed to what I will refer to as the real world, rather than the limits of the confined world, takes a great deal of adjustment.

Having nothing in reserve and having a great deal of difficulty figuring things out and placing language labels on them, even in the ordinary context, would certainly be more problematic during stressful periods.

Q. Would the effects of the impairments you discussed regarding Mr. Rompilla be exacerbated if he had an abusive or dysfunctional childhood?

A. Yes, they would because there would be psychologically no trust, no acceptance, and difficulties with interpersonal interactions.

Q. Now, the effects of alcohol, the recent [54] release from jail and the dysfunctional and abusive upbringing, is there a cumulative impact or sort of snowballing effect on the impairments that Mr. Rompilla suffers from?

A. Yes, it would be cumulative. It would be a snowballing effect, and as one stressor was placed on another, even any limited reserve would very rapidly diminish.

Q. I take it that would have further impact on impulsivity and reasoning and judgment, the other issues discussed earlier?

A. Yes, the more problematic areas would emerge.

Q. Doctor, I want to turn for a while briefly to the issue of child abuse.

Could you tell us just generally what impact does – first of all, why don't you tell us what child abuse is, clinically speaking?

A. Clinically child abuse is exposure to a situation involving an adult or group of adults and a child or group of children in which they are treated, either physically and/or psychologically, in a hurtful manner.

Q. The mental health professions have recognized child abuse as a clinical phenomena for [55] some number of years?

A. That's been well recognized both in terms of the psychological field, in terms of psychiatry and also in terms of pediatric.

Q. Would that have been true in '88?

A. Yes, it would. In fact the most important psychological and pediatric works were written in the early '70's.

Q. What impact upon the developing child does abuse have?

A. The most salient effect that it has is the introduction of mistrust, the loss of trust, a likelihood of endorsement rather than challenging those of authority or those who are adults who may have some kind of controlling focus on the individual and a general compliance under stress. But at the same time the compliance is very often erroneous because it is based on faulty construction, conceptualization of what life is like.

Q. Now, is there an element of self-esteem in the child abuse dynamic?

A. Yes, there is no self-esteem. Self – self-esteem is eliminated along with trust, and there's also a general feeling of hopelessness in [56] the situation, in that there will be no change. There's both hopelessness and helplessness.

Q. Leaving aside Mr. Rompilla's organic impairments for a moment, would someone who suffered the type of abuse that he suffered have an impact upon their impulse control and their ability to reason and judge things?

A. Having been exposed to a faulty world, with faulty expectation and having been abused in situations where others would not have, that creates a faulty image of what life is supposed to be like.

As a result, when challenged by things that don't fit into that simple mold, impulsive behavior is likely.

Q. If you combine that with the organic impairments Mr. Rompilla has, I take it – well, what impact would the abuse have in terms of exacerbating the impairments?

A. The abuse is another exacerbator, it creates a continuation of more and more problems.

Q. There was evidence in other parts of this proceeding that Mr. Rompilla and his siblings were often ridiculed by his parents, called such things as dummy, you will never amount to anything, things of that nature.

[57] That type of verbal – well, that type of name calling of parents toward children, in the abusive dynamic, what significance are they?

A. It's significant because it addresses the issue of self-esteem. Having been told countless times over and over again you are no good, it creates a self-fulfilling proficiency [sic] in which the person sees themselves as being that way and knows of no other way to act.

Q. Does that happen to feelings of lack of self-esteem and worthlessness that are part of the actual physical aspects of an abusive family?

A. Yes.

Q. In other words, if you get hit by your mom or dad and you are told you are a dummy, they reinforce your lack of self-esteem?

A. The physical abuse reinforces the psychological abuse. It becomes actually a vicious cycle.

Q. Now, we talked earlier about children who scored in the retarded range on IQ instruments, also being put in special education classes.

Does a child's low scoring and placement in special ed. also tap into the lack of self-esteem?

[58] A. Yes, because the child is clearly identified as being different, being different in terms of the relationship with his age mate peers, people of the same age.

Q. Leaving aside the family declarations in this case, just looking at the testing that you have seen, your – the historical testing, your testing, the MMPI, the placement in special ed., the mental retardation range scores on the IQ instruments, do you find support for a conclusion in this case that Mr. Rompilla had an abusive childhood?

A. Yes.

Q. If you add the family declarations to those test scores and other material, does that confirm your finding that there was an abusive upbringing in this case?

A. Yes, it does serve as a confirmation.

Q. One more question about abuse and dysfunctional upbringing, what effect does it have on the formation of cause and effects in a child?

A. It creates a notion of cause and effect because the rules are not always consistent.

Q. Of what significance is that?

A. It's a greater likelihood of carrying that into acting impulsively or what appears to be [59] impulsively, because you never learn how you are in actuality supposed to be behalf [sic].

Q. Doctor, if you could focus for a moment on the scores from Mr. Rompilla's elementary school years, in particular the WISC, W-I-S-C, scores, the achievement scores from that period of time, the 1975 DOC wide range achievement scores and the MMPI profile, and the medical

record that you looked at in this case; if you were evaluating Mr. Rompilla with just that information, what avenues would you explore in your testing?

A. I would, in my testing, I would want to look at his ability to process information, his ability to concentrate, reason, exercise judgment. I would want to look at verbal versus nonverbal behavior, and I would want to look at precursors to various forms of behavior.

Q. Those all fall into the category of looking for organicity?

A. Yes, all of that would be looking for organicity. These scores taken in and of themselves are red flags for an organic impairment.

Q. Is there any question about that or is that your particular style of perceiving or is that something generally accepted in the field of [60] psychology and neuropsychology?

A. There's no question about it.

Q. Doctor, I am going to ask you some specific conclusions and please assume that I am asking all of these to a reasonable degree of psychological and neuropsychological certainty.

Does Mr. Rompilla suffer from an organic brain – from organic brain damage?

A. Yes, he does.

Q. Is that organic brain damage of longstanding?

A. Yes, it is.

Q. Does it relate back to at least childhood?

A. Yes, it does.

Q. And could it go back to in utero causation?

A. Yes.

Q. Does he suffer from a learning disability?

A. Yes.

Q. Does this learning disability also date back in its origins to either in utero or early childhood causation?

A. Yes, it does.

[61] Q. Did Mr. Rompilla suffer from organic brain damage and learning disability in 1988, at the time of the commission of the offense?

A. Yes, he did.

Q. Did you reach a conclusion as to whether or not Mr. Rompilla was an abused child in a clinical sense as the term is used clinically?

A. Clinically, yes.

Q. Did this background in your view exacerbate the impact of his organic deficits on his function and personality?

A. Yes, it did.

Q. Now, at the time of the commission of the offense, was Mr. Rompilla under the influence of extreme mental or emotional disturbance?

A. Yes, he was.

Q. And what would that be?

A. He had recently been released after fourteen years of being incarcerated. He was attempting to readjust to the world, and also he was drinking.

Q. Was Mr. Rompilla's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law substantially impaired in 1988?

[62] A. Yes.

Q. Why do you conclude that?

A. First borderline levels, he had great deal of difficulty with reasoning, adjustment and understanding the long-term consequences of his immediate behavior. He had difficulty figuring things out.

He was exposed to multiple stressors, both in terms of the environment and in terms of chemical stressors, and as a result he was significantly impaired.

Q. Did Mr. Rompilla's brain damage impair and undermine his functioning?

A. Yes.

Q. His judgment?

A. Yes.

Q. Reasoning?

A. Yes.

Q. Cognition?

A. Yes.

Q. Mental flexibility?

A. Certainly, yes.

Q. Emotional lability?

A. Yes.

Q. And his ability to control his behavior?

[63] A. Yes.

Q. Is Mr. Rompilla's brain damage an extreme mental disturbance?

A. Yes, it is.

Q. Does Mr. Rompilla's brain damage cause an extreme emotional disturbance?

A. Yes.

Q. And did it in 1988?

A. Yes, it did.

Q. Is brain damage a mental disease or defect?

A. Yes, it is.

Q. And in Mr. Rompilla's case is that true?

A. Yes, it is.

MR. WISEMAN: I have nothing further. Thank you.

* * *

CROSS-EXAMINATION

BY MR. McINTYRE:

Q. Good morning, Doctor.

A. Good morning.

Q. My name is Mike McIntyre. I work for the Lehigh County District Attorney's office.

A. Yes, sir.

Q. How are you today?

[64] A. Okay.

Q. Doctor, you're a psychologist?

A. That's correct.

Q. You are not a medical doctor?

A. That's correct.

Q. Do I understand that you have four years undergraduate?

A. Yes.

Q. You got a degree from where?

A. University of Miami.

Q. And then you went to Florida State and got your Ph.D.?

A. That's correct.

Q. And then you went to various – I'm sorry, Florida State was one year, right?

A. No. I went to Florida Atlantic University, received a master's degree there, that was an one-year program, received that degree, and then the Florida State program I was there for roughly two and a half years.

Q. When did you graduate from Miami?

A. June of 1965.

Q. I see Florida State you got the Ph.D. in '69?

A. That's correct.

[65] Q. Then you were a postdoctorate fellow at Harvard for a year, is that right?

A. That's correct.

Q. Do you have to do anything to be an expert in neuropsychology?

A. Do you have to do anything? No. Have I done something? Yes.

Q. What have you done?

A. I am a diplomate, board certified in neuropsychology by the American Board of Professional Neuropsychology.

Q. And how did you get that certificate?

A. I received that certificate having taken a written exam, a review of selected samples of my work, and then an oral examination.

Q. I guess I am assuming from what you have testified so far and from your declaration, that basically the bottom line is that there's certain things in evidence that you can apply in mitigation of capital offenses, is that right?

A. Yes.

Q. And basically is that what you do now?

MR. WISEMAN: Objection to the form.

A. Is that what I do now?

[66] Q. Yes.

A. I don't understand your question.

Q. You say in your declaration you have frequently been called upon to apply mitigating circumstances as a psycho-legal concept.

Do you recall saying that?

A. Yes.

Q. Are you doing that now?

A. I do do that. But I also teach and I am also on the medical staff of six hospitals and regularly assess and diagnose people with neurological and neurosurgical complications.

Q. How many times would you say before 1988 were you called to give expert testimony in applying mitigating circumstances as a psycho-legal concept in capital cases?

A. Before 1988?

Q. Yes.

A. Perhaps three to six times.

Q. Did you do any of that here in the Commonwealth of Pennsylvania?

A. No.

Q. Where did you do that?

A. In Florida.

Q. And can you name the cases that you [67] were – you acted as an expert in those cases in Florida?

A. No, I can't. I really don't store that information. That would be from about ten years ago.

Q. And was that all for the defense?

A. I believe it was primarily in terms of the defense, yes. The defense would be the only group interested in mitigation.

Q. Could you tell me how many times you have testified in the Commonwealth of Pennsylvania on this same issue since 1988?

A. Since 1988, I have testified in the Commonwealth on three occasions.

Q. What were those cases?

A. Commonwealth v. Logan, Commonwealth v. Henry, and this matter.

Q. This is the third?

A. I believe so.

Q. Is it correct the other two you testified for the defense?

A. That's correct.

Q. Can you tell me, Doctor, how many times you testified for the government on this issue of applying mitigating circumstances as a psycho-legal [68] concept in capital cases?

A. I don't recall. I know in the past few months I was retained by the United States in the first capital prosecution here in the Southern District of Florida but it didn't reach that level in the proceeding.

Q. I think my question was, how many times have you testified for the government?

A. I have not in recent times.

Q. Well, did you testify for the government prior to 1988 on this issue?

A. I believe that I did, yes.

Q. I'm sorry, I didn't hear your answer.

A. Yes, I believe that I did.

Q. You are saying that you believe that prior to 1988 you testified for some government agency on the issue of applying mitigating circumstances in a psycho-legal concept?

A. It wasn't in applying the mitigators, it was, in a sense, speaking to the lack of mitigators.

Q. And can you name that case?

A. I do not recall the name of the case. It was over ten years ago.

Q. Can you tell me the government entity that you testified for?

[69] A. I do not recall whether it was in the area of Fort Lauderdale or Miami, but somewhere in south Florida.

Q. Doctor, how many cases are you involved in right now in which you're testifying for the defense in the application of mitigating circumstances?

A. At this time I haven't been asked to testify in any other proceeding.

Q. All right. So just so we are on the same wavelength, when I say that, I am asking and make it a broader sense, in how many cases have you been retained to give the type of testimony that you are giving in this particular case?

MR. WISEMAN: Objection to the form, type of testimony.

Q. You may answer.

A. I have been retained in perhaps a dozen cases.

Q. In how many of those have you been retained by the defense?

A. In all of them.

Q. And how many times have you been retained by the Pennsylvania Post-Conviction Defender Organization?

[70] A. Perhaps five or six.

Q. Are those all pending right now?

A. They are in various stages, yes.

Q. Is there a similar organization to the Pennsylvania Post-Conviction Defender Organization in Florida?

A. There is a governmental agency, state agency, yes.

Q. Is it a defender organization?

A. Of sorts, yes.

Q. Am I assuming correctly that in the other cases that you are retained by the defense now, that it does not include the ones you have mentioned for the Pennsylvania Post-Conviction Defender Organization, you would be retained by that Florida organization?

A. Yes.

Q. When did you see Ronald Rompilla?

A. On November 21st of 1995.

Q. Where did you see him?

A. I saw him at the correctional facility in Pittsburgh.

Q. And how long did you spend with him?

A. Approximately four hours.

Q. So that all the testing that you have [71] described on your direct examination were done in those four hours?

A. Approximately four to five hours, yes.

Q. I'm sorry. In those four to five hours?

A. Yes.

Q. And that included an interview?

A. That's correct.

Q. How long did the interview take?

A. I really don't know. I don't keep a time schedule. And I – I start off with a basic interview process and then

intersperse additional interview throughout the course of the testing.

Q. Aren't you paid by the hour?

A. No, I am not.

Q. How are you paid?

A. I am paid by the day.

Q. By the day?

A. Or by the evaluation actually.

Q. Which is it?

A. Well, I am paid by the evaluation.

Q. So that if you do more work in one evaluation than the other, it doesn't matter, you still get paid the same?

A. That's correct.

Q. So if you could do your work quicker in [72] one case than in another, you still would get the same amount of money?

A. In theory, yes.

Q. Did you make notes of your time spent with Mr. Rompilla?

A. No. I don't keep time notes or time sheets.

Q. You did do an interview of Mr. Rompilla though, right?

A. That's correct.

Q. When you do an interview of a person like Mr. Rompilla, I take it you have to rely on what that person tells you?

MR. WISEMAN: Objection to form.

Q. You may answer.

A. I have to rely on it at least subjectively, yes.

Q. Subjectively, I take it, that would hold true for the declarations you received from the family members?

A. Yes.

Q. Do I understand from your direct examination that those declarations were significant?

A. I said that they confirm things that he [73] related and that I had learned from those other sources.

Q. Try to answer the question, Dr. Crown. Did you use the word significant in referring to those declarations?

A. Yes.

Q. And am I correct in assuming that by significant, that means that it is something that you relied upon in reaching your opinion?

A. As to abuse, yes.

Q. Part of that abuse, you were told that Mr. Rompilla was placed in a cage when he was disciplined by his father, that was in the declarations, wasn't it?

A. Right.

Q. So you relied on that?

A. Yes.

MR. WISEMAN: I want to object. That's a mischaracterization of what's in the declaration.

Q. That's in your declaration, isn't it?

A. Yes.

Q. Let me see if I can find that.

When I say your declaration, I am speaking of the one dated November 29th, 1995, that [74] has fourteen paragraphs.

A. As I recall, yes.

Q. Do you have that with you right now?

A. No, I don't. Unfortunately I left it at home on my desk when I came to the office in the morning.

Q. Does this sound familiar, I am going to read from paragraph eight: The family accounts also reveal that Mr. Rompilla was reared in a dysfunctional family. His parents drank alcohol in excess. They fought constantly. Mr. Rompilla and his siblings were subjected to extreme corporal and other bizarre punishments, including caging the children in their underwear when they misbehaved.

Does that sound familiar?

A. Yes, it do does.

Q. What's your basis for that conclusion in your declaration, do you remember where you got that from, that information?

A. As I recall it was from statements from the family members.

Q. Did you also in your declaration – and let me find this. This is in number seven of your declaration: The accounts of his family reveal that his mother engaged in heavy alcohol consumption and [75] cigarette smoking during pregnancy. Do you recall that?

A. Yes, I do.

Q. That is significant, is it not?

A. Yes, it is.

Q. And you relied upon that information?

A. Yes.

Q. Would you tell me what the basis for that was, basis for your conclusion in your declaration, what did you rely on for that?

A. Statement from family members.

Q. Do you remember which family member told you?

A. No, I don't.

Q. Do you know that the oldest sibling was six years old at the time that Mr. Rompilla's mother was pregnant with him?

A. I recognize that.

Q. You don't believe a six year old would be able to say whether or not her mother was drinking alcohol excessively at a time of pregnancy, do you?

A. I think a six year old can remember if their adult caretakers are drunk and acting strangely, yes.

[76] Q. You think a six year old can recognize heavy alcohol use?

A. Retrospectively, yes.

Q. Let me ask you two questions about the – your conclusion of this head injury. What's your basis for the conclusion that you make that Mr. Rompilla suffered head injuries in the past?

A. He related to me the left frontal injury with loss of consciousness, and then also told me he would often drink to the point of falling and black-outs.

Q. Don't you actually list three separate head injuries that Mr. Rompilla told you about in your declaration?

A. Yes.

Q. They all came from him, right?

A. Yes.

Q. On your direct, didn't you mention one of the head injuries you thought there was a hospitalization?

A. Yes.

Q. You got the hospital records, right?

MR. WISEMAN: Objection to the form.

A. At some point, yes.

[77] Q. You don't see any hospital records in regard to a head injury, do you?

A. I don't know if I have all the hospital records. I only know he related he went to the hospital and I know that he has a scar over the left frontal orbit.

Q. But in answering my question, do you have any hospital records which support any episode of head injury?

A. No.

Q. You are relying on Mr. Rompilla for those statements, correct?

A. Yes, I am.

Q. Do I understand there's some document that you saw from the prison that indicates he has a scar on his lip, his right upper lip, and a scar above his left eye?

A. Yes.

Q. Do I also understand in the statement you took from Mr. Rompilla, he said he got both those injuries in the same episode?

A. Yes.

Q. He was somehow hit by a rock or something?

A. Yes, as I recall.

[78] Q. You're not a medical doctor, right?

A. That's correct.

Q. But can you tell me how he would get an injury on his left upper lip – strike that, his right upper lip and his left eyebrow with one rock without having significant injury to his nose?

A. I can't explain the physics or mechanism. Nor have I seen the shape of the rock or object.

Q. You would agree with me it would have to be a rather large rock, right?

MR. WISEMAN: Objection. The witness said he can't discuss the matter.

A. I don't know.

Q. Well, if you know that it injured his right upper lip and his left eyebrow at the same time, it would have to be large enough in circumference to engage both those body parts, correct?

A. Or it could have bounced.

Q. It could bounce from one of his – from his lip to his head?

A. Or it could have fallen from his head to his lip.

Q. And you imagine that would have enough [79] force after the first impact to cause the second impact?

MR. WISEMAN: Doctor, don't answer that question, until I make my objection. I object because the witness already indicated he does not know the physics of how that could happen. I think you are questioning him in a line he already told you he has no answer for.

Q. Would you answer that question, Doctor?

A. I have been instructed not to.

MR. WISEMAN: No, no. Until I made my objection. You can answer now.

A. I don't know. I do not know the physics or the mechanism, but it is as likely the object may have been descending rather than ascending.

Q. How would you be able to tell from a scar whether or not there was brain injury?

A. Looking at the scar itself, you can't. Looking at the neuropsychological data, the neuropsychological data indicates that there are left frontal problems. He also has the manifestations of an external left frontal problem. They may be related, but they may not.

Q. So you work backwards? Let me make that clear what I mean. You took the fact you believed [80] he had some brain injury from your test and then worked back and said, well, one of the possible explanations is he had some trauma, is that what you did?

A. That was one of the possibilities, yes.

Q. Certainly the test results that you got in this case didn't guarantee or make with certainty the fact he had head trauma, does it?

A. There are no neuropsychological tests that would definitively state someone had head trauma. The only thing that the neuropsychological tests can do is state that someone has brain damage.

Q. So the answer to my original question, from the scar alone, you certainly don't know whether or not there was brain injury, do you?

A. That's correct.

Q. Because a scar is exactly that, it's damage to the tissue of the skin, is that correct?

A. Yes.

Q. We don't know from that whether or not there was a penetrating force into the brain, do we?

A. Not for a certainty.

Q. Dr. Crown, did you have as one of the things you relied upon prior to doing the declaration, a report from Dr. Paul K. Gross?

[81] A. Yes, I have the Gross report.

Q. Now, did you rely on that in formulating your opinion?

A. No.

Q. You did not?

A. No.

Q. Why not?

A. My opinion is based on my assessments, not Dr. Gross's assessments.

Q. Well –

A. In fact Dr. Gross did not actually do assessment with testing, as I recall.

Q. Dr. Gross took statements, though, back in 1988 from Mr. Rompilla, right?

A. Yes.

Q. And you relied on statements that Mr. Rompilla made to you back in November of '95, correct?

A. That's correct.

Q. Doesn't it matter to you if the statements that Mr. Rompilla told you in November of '95 are contradicted by statements that he told Dr. Gross in 1988?

A. Not necessarily, no.

Q. Why is that?

[82] A. Because Mr. Rompilla has difficulties with his reasoning and judgment, is likely to confabulate because of his confusion, and as a result everything that he says indeed may not be consistent.

Q. I take it you can't really rely on anything he tells you?

A. As I said earlier when you asked me, I relied on it in terms of subjective information.

Q. All the information on the head injury came from Mr. Rompilla, right?

A. That's correct.

Q. All of the information on these alleged alcoholic black-outs came from Mr. Rompilla, did it not?

A. That's correct.

Q. And to be clear on that, you also had a report of that from Dr. Erwin who also relied on Mr. Rompilla for the alcohol black-outs, right?

A. Yes.

Q. There's no objective evidence of alcoholic black-outs, is there?

A. I did not follow him around, that's correct.

Q. Nor did you read any reports of anybody [83] who actually saw him in an alcoholic black-out, did you?

A. I don't recall.

Q. Now, Doctor, isn't it fairly common for a person in prison after being convicted of a capital offense to come up with a story of alcoholic black-out?

MR. WISEMAN: Objection.

Q. You may answer.

A. I don't know that that's necessarily typical, no.

Q. You haven't seen that on a fairly regular basis?

MR. WISEMAN: Objection to the form.

Q. You may answer.

A. I have seen people who have histories of alcoholism. I haven't seen people who have fabricated that history.

Q. You have never once in your experience seen a person who you believe was just – just coming up with a defense mechanism to assert that they had an alcoholic black-out at the time of his crime?

A. I have seen that in other circumstances, [84] yes.

Q. What do you mean by other circumstances?

A. I am a consultant to the Florida Bar and evaluate attorneys who are subject to grievances, that's a very common thing.

Q. It's certainly possible Mr. Rompilla is doing the same thing that I just mentioned, isn't it?

A. It's possible but not probable.

Q. Well, in deciding whether it's possible or probable, did you consider the fact that when Dr. Gross examined

him and evaluated him in '88 he denied ever having any alcoholic black-outs?

A. Yes, he said he drank on weekends and didn't consider himself an alcoholic is what Dr. Gross reported. But he did say Mr. Rompilla attended AA meetings.

Q. Try to focus on the question.

MR. WISEMAN: I object to that. He is focusing on the question. It's your opinion he's not.

Q. The question was did you consider the fact that in Dr. Gross's report he states that Mr. Rompilla denied ever having any black-outs?

A. Yes.

[85] Q. Did you consider the fact he told Dr. Gross, and I am quoting Dr. Gross's report, he, Rompilla denies any head injuries –

A. Yes.

Q. – did you consider the statement in Dr. Gross's report that, quote, he, Rompilla, also denies that alcohol made him do any violent behavior?

A. I read that, yes.

Q. Did you rely on –

A. Do I rely on what Dr. Gross says?

Q. No, do you rely on what – did you rely on what Rompilla told Gross in 1988?

A. No.

Q. Dr. Crown, you have testified in mitigating phases of capital cases, right?

A. That's correct.

Q. Have you been involved in cases in which a jury then reached a verdict on the penalty phase?

A. Yes.

Q. How many times have you testified in that type of situation?

A. In trials, at the trial level, is that what you are asking?

Q. That's correct.

[86] A. Under a dozen times in the last twenty years.

Q. I take it – and I appreciate your making that clear. When I asked you before about the number of cases you are involved in right now for the defense, are all those cases in which a person has already received the death penalty and now we are post trial as we are in this one?

A. Yes.

Q. So in your entire career then there were twelve other cases in which you actually did testify at the trial on the mitigating phase – or in the mitigating phase?

A. Yes, roughly, roughly about a dozen in the last twenty years.

Q. I do understand from your earlier answer to my question, only about three of those were before 1988?

A. No. I pretty much stopped doing criminal trial work and have not done much criminal trial work in the last six years.

Q. Well, help me with what I thought you said; that isn't it true that of those twelve you said there was only like three you had done before 1988? I think you said, to be honest three and then [87] you said three to six in the state of Florida?

A. Yes.

Q. Can you – let me ask you this, Florida had the death penalty – has had the death penalty for how long, do you know?

A. Since it was reinstated. That would be roughly twenty years.

Q. And they have been executing people for the last twenty years?

A. Close to it, yes.

Q. Am I right – are you aware of what is happening in the state of Texas as well?

MR. WISEMAN: Objection to the form.

Q. In regard to the death penalty, Doctor?

A. I know that Texas has the death penalty, yes.

Q. And are you aware that for years, although the state of Pennsylvania had the death penalty, no one was being executed?

A. Yes, I am aware of that.

Q. All right. Do you know, Doctor, whether or not this type of testimony that I started off asking you about, testimony in regard to mitigating in a capital case, do you know whether or not [88] anybody was testifying on that issue in the Commonwealth of Pennsylvania as of 1988?

MR. WISEMAN: Objection to the relevance.

Q. You can answer.

A. I have no idea of what people were doing in the state of Pennsylvania in terms of testimony in 1988.

Q. You know what I mean when I ask you about the state of the art?

MR. WISEMAN: State of what art? Objection.

Q. Doctor, you did not know enough to answer that question?

A. The state of the art is such that, yes, there are certainly professionals from the mental health field that could and could have in 1988 testified as to sexual abuse, as to child abuse, as to neuropsychological impairments, as to alcohol problems, as to drug problems.

Q. They could have. But were they in the Commonwealth of Pennsylvania prior to 1988?

MR. WISEMAN: Objection. Asked and answered.

Q. You may answer.

[89] A. I have no idea what people were doing in the state of Pennsylvania.

Q. All right. Now, how about in the state of Florida, prior to 1988, what was the state of the art in regard to the defense offering an expert on the issue of mitigation, prior to 1988.

MR. WISEMAN: Objection to the question, in terms of the form, use of the words state of the art.

Q. You may answer.

A. I know in Florida there were mental health professionals who were testifying in '88.

Q. How about before 1988?

A. Yes, there were people who were testifying before '88.

Q. Can you give me their names?

A. Not offhand. I can recall Dr. Arthur Stillman, S-T-I-L-L-M-A-N.

Q. You were sure he was giving that type of testimony prior to 1988 in the state of Florida?

A. Yes.

Q. Certainly – and we will leave this area, certainly I believe you have testified you don't know of anyone who was doing that in the Commonwealth of Pennsylvania?

[90] A. I do not, no.

Q. Now, I got a little bit off the track, Doctor. In the times that you did testify on the mitigation phase or in the mitigation phase of a trial, did you ever have the opportunity to talk to the jury after the evidence was presented and the case was over?

MR. WISEMAN: Objection to relevance.

Q. You may answer.

A. No, I didn't .

Q. Have you ever studied any tests of jury verdicts which indicate how a jury accepts or handles this type of mitigation evidence?

MR. WISEMAN: Same objection, it's irrelevant.

A. No, I haven't.

Q. Do you have any idea, have you ever thought of how a jury will handle some of the things you have brought out about Mr. Rompilla?

A. No.

Q. Let's talk a little bit about those things, the tests you did, the neuropsychological tests you did.

By the way, before we do that, so [91] that I don't forget, were there tests that psychologists did back in '88, not of the neuropsychological variety, in order to determine mitigating factors?

A. I am sure there would have been, yes.

Q. Do you know what an EEG is, right?

A. An EEG?

Q. Yes.

A. Yes.

Q. And then just for the record, what is that?

A. Electroencephalogram, it's a measure of the electrical activity of the brain.

Q. That's a test for brain damage, is it not?

A. It is a test of electrical activity of the brain which may indicate damage or it may not.

Q. It's about 30 percent effective, is it not?

A. Yes.

Q. Are psychologists still using that test?

A. Some psychologists are, yes.

Q. You still use it, don't you?

A. Yes, I do.

Q. What other type of tests were there [92] back in '88, psychological tests?

A. There were and are tests of cognition. There are tests of vocational ability and aptitude, tests of achievement, and there are tests of interpersonal interaction.

Q. The WRAT test is one of them you are talking about when you talk about achievement?

A. That's correct.

Q. There is the MMPI test?

A. That's correct.

Q. Do you know if any of those tests were done in this case back in '88 for Mr. Rompilla?

A. I don't know that they were done, no.

Q. Did you ever hear or look at any test results from tests done by a Dr. Gerald Cooke?

A. No, I don't recall that.

Q. And were you aware that there was a psychiatrist involved in 1988 by the name of Robert Sadoff?

A. No. I know Dr. Gross.

Q. You have no other information for any tests that may have been done on Mr. Rompilla back in '88?

A. That's correct.

Q. Your test, the neuropsychological [93] test –

A. Yes.

Q. – I believe you identified about nine of them?

A. I didn't count them, but that sounds about right.

Q. Well, first question, were all of those tests performed back in '88 by neuropsychologists such as yourself?

A. Those tests or earlier forms of those tests were available and were used by neuropsychologists in '88.

Q. Let's not talk about earlier forms of the test. Let's talk about the exact test you did in '95, were they all being done by neuropsychologists in '88?

A. Every one of the tests was available in '88, except for the WRAT Three, it was the WRAT Revised that was available in '88. The WRAT Three became available in 1993.

Q. So if you had been retained by the defense in '88 you would have performed all those tests with that one exception on Mr. Rompilla?

A. I would have given the earlier version of the WRAT, yes.

[94] Q. I believe the first test you said was the auditory selective attention?

A. Yes.

Q. How long did that take?

A. I don't keep a time sheet for those things, sir.

Q. Can you tell me in laymen's terms what you do and what Mr. Rompilla does in that test?

A. I run through a sequence of items on a story board, asking him to make choices, and point to them.

Q. Can you give me an example?

A. There's a story board that has a person wearing a wig – a wing, a key, and some peas in a pod.

Q. Just pictures?

A. Pictures.

Q. Do you ask him to do what?

A. I ask him to point to a particular thing. For example, I might ask him to point to the wing.

Q. You show him a picture of various objects and you ask him to point to one of them?

A. Yes.

Q. Is it the object of the test to see [95] whether he knows what the object is that you are asking him to point to?

A. The object is to clarify and to teach him in case there's a problem about what the objects are.

Q. And the first time you do the test, you don't distract him?

A. That's correct.

Q. The next time you do it, you distract him?

A. Yes. There's a sequence. The sequence involves about a hundred pointing exercises.

Q. How do you distract him? Give me an example.

A. I distract him by playing a standard distraction tape on a tape recorder.

Q. While the tape recorder is playing, you ask him again and see if that's affected his ability to do it?

A. No, the tape also does the asking, so it's at the same decibel level.

Q. I am not sure I follow that. You mean you never ask him personally, it's just a tape doing that?

A. That's correct.

[96] Q. On both versions, and the second time around, while asking him, there will be other noises on the tape?

A. That's correct.

Q. Did I understand you to say that the results of this test – let me rephrase that.

That this test shows abilities that are subject to degeneration?

A. Our attending abilities degenerate along with our brain processes as we get older.

Q. I think you said Mr. Rompilla tested as if he were 82 years old?

A. That would be the equivalent, the statistical equivalent, yes.

Q. Is it true that test – those test results may have been much different seven years ago, in 1988?

A. I believe that they would have been consistent although, yes, they would been different because he was in a different age category.

Q. And since his results get poorer as he gets older, he's seven years older now, right?

A. That's correct.

Q. The Shipley abstract problem solving test?

[97] A. Yes.

Q. What – how long did that take?

A. Once again, I don't keep time sheets. It involves completing sequences.

Q. What exactly do you do and what does the subject do?

A. I ask him to complete sequences for example, A, B, C, D, what comes next. And it gets more complex.

Q. That's pretty easy, right?

A. That's correct.

Q. Give me the complex example.

A. A complex example?

Q. Yes. If you started with the easiest one, give me the hardest one, if you can.

A. T-W-O, W; F-O-U-R, R; O-N-E, O; T-H-R-E, and then there's a dash.

Q. You stumped me, doctor.

A. Write it down.

Q. That's okay. That's the example of the hardest one?

A. Yes.

Q. And what does that test, his ability to solve problems, I take it?

A. Abstract problem solving using language.

[98] Q. He had the ability of a nine year old?

A. Eight years, nine months.

Q. I'm sorry, I thought you said nine years old?

A. Eight years, nine months.

Q. The category fluency test.

A. It's the category test.

Q. Isn't it called the fluency test as well? I don't hear you.

A. No.

Q. You don't know how long that takes so I won't bother asking you anymore. You don't know how long any of these tests took?

A. No, I don't.

Q. What do you do, what does the subject do?

A. He's shown a series of boards with geometrical figures on them. The geometrical figures relate to a number between 1 and 4, and he's asked to determine what number the figures relate to. Each time he's told whether he's correct or incorrect.

Q. And that measures whether or not he's impulsive or not?

A. It measures the ability to take new [99] learning, new information, and then apply it in a problem solving situation, because the decision making rules change.

Q. Didn't you say though that his results indicated that he was a person of impulsive behavior?

A. Yes.

Q. The Wisconsin card sorting test?

A. Yes.

Q. His results, Mr. Rompilla's results, indicated he was unable to choose the correct response and that he can't monitor his conduct?

A. Yes, he engaged in what I believe I referred to as perseverative behavior.

Q. The WRAT test was the next test you did. That just basically tests his reading, writing and arithmetic skills?

A. That's correct.

Q. The next test I lost, had something to do with the word, I think, trail was in it?

A. Trail making test, forms A and B.

Q. All right. What does that test?

A. It's a test of concentration and attention and conceptual flexibility.

Q. And that tests his ability to switch [100] from one idea to another?

A. Conceptual flexibility is the ability to switch from one idea to another, to move smoothly from one idea to another.

Q. That Luria Christensen memory test –

A. Yes.

Q. – was the next test you did?

A. That's correct.

Q. And I believe you said that that's – the results from Mr. Rompilla is another indication he acts impulsively?

A. This is a test of memory and recall.

Q. Did you say that the results, though, indicated he acts impulsively?

A. There is some impulsiveness in his responses because he's quick to respond, yes.

Q. How about the Ray-Osterrieth test?

A. Yes, that's a test of nonverbal memory and recall.

Q. Does that again – do his results show he has a tendency to act impulsively?

A. This is a test of memory and recall. He has a tendency to have problems with memory and recall.

Q. Nothing about impulsive acting there?

[101] A. No.

Q. And that right hand Indiana aphasia screening test, the result of that is he can't even do simple tasks?

A. That's correct.

Q. Now, here's the question I wanted to ask you, Doctor, you remember I was asking you about whether or not you ever were able to, either by talking to a jury or seeing studies, have any idea of how this information will affect a jury who has to decide between death or life imprisonment, correct?

A. Yes.

Q. Have you ever sat down and thought about how a jury would be affected by evidence, number one, that the defendant acts impulsively?

MR. WISEMAN: Objection. It's irrelevant.

Q. You may answer.

A. No, I haven't.

Q. I think it was when you were referring to the tests that he had been given in 1976, MMPI and WRAT test –

A. Yes.

Q. – that you said, tell me if I am wrong, [102] these test results show he was unpredictable, schizoid, and impulsive?

A. Mr. Wiseman read those things to me and I was in agreement, yes.

Q. Have you ever thought or reflected upon what a jury considering life or death would do with that testimony, that Mr. Rompilla was unpredictable, schizoid and impulsive?

MR. WISEMAN: Hold your answer for a moment, Doctor. So I don't have to keep interrupting your examination, I object to all questions that call upon psychologists to answer as to whether a jury would find something significant. That forces a determination for attorneys to make.

Q. Can you answer that, Doctor?

A. Only to the extent that, no, I don't know.

Q. As an expert who testifies in applying mitigating circumstances as a psycho-legal concept in capital cases, have you ever given any thought to the quote, unquote, bad things that can be developed from your testing in regard to a jury's decision?

A. No, I haven't.

Q. Do you agree there are some bad things that could come out of it?

[103] MR. WISEMAN: Objection to the form of the question, bad.

A. I haven't considered that.

Q. We'll call those, so we are all clear, negative things, things that a jury could rely upon to vote for the death penalty over life imprisonment.

MR. WISEMAN: Are you referring, Mr. McIntyre, to aggravating circumstances?

MR. McINTYRE: I am talking negative things.

MR. WISEMAN: I object. There's no such thing in the law of death penalty as negative things. They are either aggravating or mitigating.

Q. Doctor, can you answer that question?

A. I don't know.

Q. I think basically what I did was told you what I meant by bad, quote, unquote, the negative things, okay.

MR. WISEMAN: Objection to what you told him.

Q. Do you understand that, Doctor?

A. I think I know, but I don't know for certainty.

[104] Q. For example, a lot of the MMPI results can indicate antisocial behavior, correct?

A. It's possible, yes.

Q. Well, do you remember going over the test, the MMPI tests that were done in 1976 for Mr. Rompilla?

A. I remember going over the scores of an MMPI test that was done at some point. I believe it was in the '70's, yes.

Q. There are scores that indicate antisocial behavior on behalf of Mr. Rompilla, correct?

A. Yes.

Q. Do you know what an [sic] sociopathic is?

A. Yes.

Q. Those scores indicate sociopathology in Mr. Rompilla, don't they?

MR. WISEMAN: Objection to scores.

A. They assess the validity of the MMPI.

Q. If you accept the validity, that's what they indicate, right?

A. That's what they would indicate, yes.

Q. Have you ever reflected upon what a jury would do with that information?

A. No.

[105] Q. Doctor, have you ever reflected upon the strategy decision that a defendant must make in the mitigating phase to attempt to, number one, excuse his conduct by using the evidence which experts like you present, or by maintaining his innocence?

A. No, I haven't.

Q. You never once thought about that?

A. No.

Q. Would you agree with me it is a strategic decision involved there?

A. I believe there's a decision involved that involves lawyering, yes.

Q. You know people as a psychologist, you know people and how people think, don't you?

MR. WISEMAN: Objection to form.

Q. You may answer.

A. I know how to assess people, yes.

Q. Have you ever done any studies of juries in an attempt to assess a jury?

A. No.

Q. Did you notice in Mr. Rompilla's school records that he seems to do okay in seventh, eighth, and ninth grade?

A. That he seems to do okay?

MR. WISEMAN: Objection to form.

[106] Q. Yes. Do you have that in front of you?

A. Yes.

Q. - It's on page two, I believe, of the school records.

A. Yes.

Q. 1961, '62, he's in the seventh grade, '62 and '63 he was in the eighth grade?

A. Yes.

Q. And '63, '64 he was in the ninth grade?

A. Yes.

Q. I don't see any SP indicating any kind of special –

A. I don't know the way that that school system did their special education. I don't know. I don't know what the numbers mean, and I don't know what type of classes he was in. I don't know whether the grades are based on an expectation. I don't know whether it's a comparative base. I have no idea where the numbers come from.

Q. You see when he's in seven grade, number one, he doesn't miss a day of school, does he?

A. No, sir, he didn't.

Q. He passes everything, right?

A. Correct.

Q. In eighth grade, he missed two and a [107] half days of school, right?

A. Yes.

Q. And again he passes everything?

A. Yes, he does.

Q. And, in ninth grade, I believe he misses, I can't make this number out, it looks like five and a quarter days or five and half, would you agree with me?

A. Five and a half, yes.

Q. Again he passes everything?

A. Yes, he does.

Q. Then do I understand the history you got, he left school in order to get a job and work?

A. Yes.

Q. At least from the school records there's no indication of any problem in the seventh, eighth and ninth grade, is there?

A. Again, I don't know what classes he was in, what the basis for the classes were, nor do I know the basis for the scoring.

Q. Would you agree with me that based on the school records alone, there's no indication of any problem in those three years?

MR. WISEMAN: You are referring to the grades?

[108] A. Grades themselves, the grades are satisfactory.

Q. Wouldn't that indicate the grades that weren't satisfactory in the earlier years, wouldn't that indicate that was a temporary situation, the earlier years?

A. I am hard-pressed as a psychologist to know how someone would get smarter between the sixth and seventh grades.

Q. Are poor grades also connected with how smart a person is, aren't they also connected with effort being applied?

A. May be connected to effort, could also be connected to the benevolent teachers, also based on incidents, scoring and grading, meaning that the person serves as their own control. There are many possible explanations.

Q. You have no idea which is the correct one in this case, do you?

A. That's correct. The only thing I am aware of is that this is a person who had a full scale IQ in 1961 of 69.

Q. Doctor, do you really believe, this hospital treatment for Mr. Rompilla when he was two years old and had a, I guess, a 105 fever, had [109] anything to do with his present condition or his condition at the time of the commission of this offense in 1988?

A. It may have been a contributor to his organic brain damage.

Q. Now, let me ask you if you can use a word stronger than may. You don't have any opinion to a reasonable degree of medical certainty that this had anything to do with his condition, do you, Doctor?

MR. WISEMAN: He's not a medical doctor. You asked to a medical certainty. Objection.

MR. McINTYRE: I regard psychology as a form of medicine.

MR. WISEMAN: I still object.

Q. We have an objection being placed. We change it to a reasonable degree of psychological or neuropsychological certainty. Can you answer that question?

A. I believe that that incident contributed, yes.

Q. And you hold that to that degree, correct?

A. Yes.

[110] Q. Do you have children, Doctor?

A. Yes.

Q. Isn't it fairly common for a child to have a fever of 105?

A. Yes, it is.

Q. I mean, we don't like it as parents, we get very upset and scared with it, but it does happen?

A. Yes, it does.

Q. Obviously every child who had a temperature of 105 doesn't develop brain defect, do they?

A. No.

Q. Well, how can you say then that this contributed to some kind of brain defect that Mr. Rompilla has?

A. Because the manifestation was not only the fever but it was also the diarrhea.

Q. What does diarrhea have to do with it?

A. I am concerned about the child's electrolytic balance.

Q. Isn't that another common occurrence among children, they have diarrhea when they have a fever?

A. No.

[111] Q. It is not?

A. No.

Q. 1988 Wechsler score of 79, not retarded, right?

A. That's correct, that's in the borderline range.

Q. Does not indicate mental retardation, does it?

A. No.

Q. Doctor, at some point you gave an opinion as to the effect of Mr. Rompilla's child abuse on his, I guess, thought processes in 1988 at the time of this offense, and the question was framed to you in a way that asked you not to rely on what family members told you, and asked if you had an opinion nevertheless, and you said, yes, you did. Do you recall that?

A. Yes, I do.

Q. My question to you, if you are not relying on family members, what is your basis, what is the basis for your conclusion that Mr. Rompilla was the victim of child abuse?

A. I relied on those accounts that absent the specific account – that was phrased to me, I don't recall how it was phrased, but certainly I did [112] rely on what I was told. I wasn't there.

Q. Your conclusion he suffered from child abuse has to be based on the declarations of those family members, isn't that constrict [sic]?

A. Yes.

Q. Doctor, you testified up here in Northampton County, which is our neighboring county, in the case of Commonwealth versus Henry, correct?

A. Yes, I did.

Q. Your conclusions in that case were based on alleged head trauma that Mr. Henry suffered, isn't that correct?

A. Yes.

Q. And you didn't have any hospital records for those head – that alleged head trauma, did you, in the Henry case?

A. I don't recall. I don't believe so.

Q. And your opinion was also based in part on the allegation that Mr. Henry's mother had some prenatal problems?

A. Yes.

Q. And that again was not based on any hospital records, was it?

A. That's correct.

Q. Dr. Crown, what is your position in [113] regard to the death penalty?

A. I am in favor of it.

Q. You are?

A. I support it, yes.

Q. Have you ever been called on to or been in any position where you had to act on that, that you acted to show that you were in favor of it?

MR. WISEMAN: Objection to the form.

A. I have expressed it when asked.

Q. In all the cases though that you talked about that you have been retained now by either this Pennsylvania Post-Conviction Defender Organization or the Florida counter-part, you have been retained in an effort to avoid the death penalty for the defendant, is that correct?

A. I have been retained to do assessments and provide testimony if asked.

Q. In all these cases, though, the position which you are advocating is that the death penalty should be removed, as for this particular defendant, correct?

A. I give my testimony based on my findings. I leave it to the lawyers to make the kind of argument you are talking about.

[114] Q. Would you answer my question?

MR. WISEMAN: I think he did I [sic]?

A. As to the ultimate outcome.

Q. The ultimate outcome would be that the death penalty would be set aside?

A. Yes.

Q. You don't see yourself as an advocate for that position?

A. No, I see myself as presenting my findings.

Q. Is there any case right now in which you have been retained in which you are advocating the position that the death penalty should be imposed?

A. Not at this time.

MR. McINTYRE: Thank you, Doctor. Have a nice day.

MR. WISEMAN: Doctor, I have a little bit of follow-up.

* * *

REDIRECT EXAMINATION

BY MR. WISEMAN:

Q. As you indicate on direct exam, you found the presence of organic deficits in Mr. Rompilla's testing, is that right.

A. That's correct.

[115] Q. Do those conclusions regarding his organic impairments stand independently of your evaluation of whether he had head trauma?

A. Yes.

Q. Do they stand independent of your evaluation of whether he was abused as a child?

A. Yes, they do.

Q. Do they stand independent of the medical records regarding his hospitalization at the age of two?

A. Yes, they do.

Q. Do they stand independent of your review of the school records from when he was in elementary and junior high school?

A. Yes.

Q. Do they stand independently of the 1975 and '76 MMPI and wide range achievement testing administered by the Department of Corrections?

A. Yes, they do.

Q. Now, once you reached your conclusion that there was organicity in Mr. Rompilla's case – well, withdrawn.

Does your conclusion that you expressed on direct that these deficits are long-standing and relate back to childhood and [116] perhaps earlier, do they stand independently of all the things I just mentioned?

A. Yes, they do.

Q. Now, once you reached the conclusions that he had organic deficits that were longstanding in nature, did you then set out to attempt to identify possible causes for these deficits?

A. Yes, I did.

Q. And is it there that you then relied on the family history?

A. That's correct, yes.

Q. And the testing that we just discussed?

A. Yes.

Q. The school record testing and the DOC testing?

A. Yes.

Q. Is it then that you looked at the history of head trauma?

A. Yes.

Q. And the medical records from age two?

A. Yes.

Q. If you took away all the collateral information, other than your testing of Mr. Rompilla, do you still have an opinion as to whether or not he suffers the organic defects you discussed [117] in your direct exam?

A. Yes.

Q. What's that opinion?

A. He remains with organic brain damage.

Q. That is objective science?

A. Yes.

Q. Has nothing to do with your opinions under the death penalty?

A. That's correct.

Q. It has nothing to do with who has retained you in the past?

A. That's correct.

Q. Now, regarding your involvement in Pennsylvania cases, I think you mentioned Ronald Logan?

A. Yes.

Q. Was that a case related to mitigating factors or was that a case related to competency to be executed?

A. That related to competency to be executed.

Q. Do you remember what Judge Ribner of the Court of Common Pleas ruled in that case?

A. Yes.

Q. What was his ruling?

[118] A. His ruling was that Mr. Logan was not competent to be executed.

Q. And was your opinion he was not competent to be executed one shared by the court appointed – by the court appointed psychologist, Albert Levitt?

A. Yes, sir.

Q. Was it shared by a defense retained psychologist, Dr. Dudley?

A. Yes, it was.

Q. Have you ever been retained by the defense in a capital case regarding mitigation and have not testified?

A. Yes, I have.

Q. Have you ever made findings that you shared with the defense that were not helpful to the defense?

A. Yes.

Q. And in those circumstances, were you told your services were no longer required?

A. Yes, I was.

Q. So would it be fair to say then just because you are retained you don't come and be a mouthpiece for any defense theory or proposition they wish to put forward?

[119] A. That is correct.

Q. You testify and give your reports based on your testing, is that right?

A. That's correct.

Q. Now, to the extent you relied on things Mr. Rompilla told you in searching for causes of this organicity, would you agree that – or disagree with the statement that what he told you was consistent with what you found on your testing?

A. Yes, I would agree, it was consistent.

Q. Is there anything he told you that caused you to pause and that was inconsistent with your testing?

A. No.

Q. Now, Mr. McIntyre asked you about whether or not your opinion was based on the fact that Mr. Rompilla himself was caged by his father as opposed to other members of the family siblings, but not Mr. Rompilla.

Assume for the moment that the facts before you are that Mr. Rompilla was not caged, but his two older brothers were placed in a cage in the family's living room for a week.

Would the – assuming that fact to be true, would that type of treatment of Mr. [120] Rompilla's siblings have a clinically significant impact on him as a developing child?

MR. McINTYRE: I have to object unless you put in the age of Mr. Rompilla at the time.

MR. WISEMAN: You can do it on recross.

Q. Do you have an answer?

A. Yes.

Q. What is your answer?

A. It would have a chilling effect.

Q. Explain that.

A. Having witnessed that, he certainly would have recognized that on some other occasion it could have happened to him or something even worse could happen.

Q. Would it add to the abuse dynamic?

A. Yes, it would.

Q. Now, assuming that that happened and that his father did not receive massive psychotherapy or other mental health treatment; in your experience with child abuse would a parent that subjects siblings to that type of behavior probably treat his other children in a similarly abusive fashion?

[121] A. Yes.

Q. Even if the cage itself wasn't used?

A. Yes.

Q. Now, Dr. Gross in his report, is there any indication in his report that he relied on any neuropsychological testing?

A. No, there is not.

Q. Is there any indication that he relied on any neurological testing?

A. No.

Q. Did he rely in his report or make any mention of psychological testing?

MR. McINTYRE: Objection. The report speaks for itself. Why are you wasting our time?

MR. WISEMAN: No, I'm not.

MR. McINTYRE: Yes, you are.

Q. We didn't get an answer to the question about psychological testing.

A. No, he did not.

Q. Was there an indication – withdrawn.

Would you agree the report appears to be primarily based on self reporting of Mr. Rompilla?

A. Yes, I would.

[122] Q. Is there any collateral source at all cited in that report?

A. None.

Q. Mr. McIntyre questioned you at some length regarding what was going on in Pennsylvania with various death penalty cases.

Are you aware in 1984, the case of Commonwealth –

MR. McINTYRE: It's objected to as leading. You can't lead him like that. I am going to have to put a stop to it. Objection, leading. Rephrase. Please.

MR. WISEMAN: I think in the context of examining an expert witness in view of your cross, that the form of the question is proper and I am going to ask the Doctor to answer.

MR. McINTYRE: I object to the form.

MR. WISEMAN: You can object to it.

MR. McINTYRE: Fine. I did.

MR. WISEMAN: Do you want to object again?

MR. McINTYRE: No. Once is –

BY MR. WISEMAN:

[123] Q. Doctor, my question is are you aware in '84, Commonwealth v. Duffey, the defense presented evidence of child abuse?

A. I am not specifically aware of it, no.

(Discussion off the record.)

Q. You were asked about the use of EEG's. Is that a test that psychologists administer?

A. It's a test that psychologists developed but neurologists have adopted.

Q. Who actually gives the test?

A. The technician.

Q. Now, you were questioned about the auditory selection test and I think the question had to do with would your opinion have been different if you – would the result of the test have been different if you had given the test seven years ago, do you recall that question?

A. Yes.

Q. Did I understand you to say that the result would have been different because he would have been seven years younger?

A. It would have been an age appropriate difference.

Q. Would your opinion as to whether or not he was impaired had been affected at all by the [124] chronology of when the test was administered?

A. No, it would not have.

Q. Why is that?

A. Because the normative standards take into account age, so the statistical difference would have been the same, the equivalencies would have been different based on age.

Q. Mr. McIntyre questioned you regarding whether certain tests showed impulsivity, problems with judgment, problems with reasoning, problems with predicting future consequences.

What is the relationship between impairments in organic testing – I should say impairments – on testing for organic impairments and the presence or absence of impulsivity, judgment, reasoning, ability to judge future consequences?

A. They are very closely related, particularly in terms of assessment of frontal lobe and executive functioning.

Q. So for example, if a test shows that a person can't pay attention, it's not – withdrawn.

If a person can't pay attention as indicated on a particular test, it's not the test qua test that makes out the impulsivity but the [125] person's inability to pay attention that leads them to be impulsive by example?

A. Underlying function, not the test.

Q. Now, Doctor, Mr. McIntyre questioned you about Mr. Rompilla's performance in the seventh grade, in particular the grades.

Is the WISC, the Wechsler, Intelligence Scales for Children, is that a standardized test?

A. Yes, it is.

Q. Is the wide range achievement test a standardized test?

A. Yes.

Q. The WRAT?

A. Yes.

Q. Are grades in school standardized?

A. No, they are not.

Q. In your experience do they obviously vary from teacher to teacher and school to school?

A. Yes.

Q. As a psychologist and neuropsychologist, do you rely – do you find standardized testing to be more reliable or find grades to be more reliable?

A. Standardized information is much more reliable.

[126] Q. You would consider grades, is that right?

A. Yes.

Q. But you would consider the testing to be more reliable?

A. Certainly.

Q. You were questioned about the diarrhea and the fever.

Is it the presence of diarrhea in a child and a fever in a child of 105 degrees that you found significant, or was it the presence together and the severity of the conditions that you found significant?

A. It's the combination and the severity which takes it out of the ballpark of the typical at home sick child.

Q. So many, many children have fevers?

A. Yes, certainly.

Q. And many children have diarrhea?

A. Yes.

Q. You don't think necessarily that leads to organic impairments?

A. Yes.

Q. It was the severity of it you felt in this case was a possible explanation for the [127] organicity you found in the testing?

A. Yes.

Q. There's an increase in the IQ testing Mr. Rompilla had in grade school with that that he achieved as an adult in the Department of Corrections, is that correct?

A. Yes.

Q. That would be the 79 on the WAIS and the 93 on the Beta, is that right, Doctor?

A. The difference between a full scale score of 69 and full scale score of 79 is not statistically significant, there really is no difference.

As for the Beta score, the Beta test produced scores that are inflated over the Wechsler scores.

Q. Assume for the moment there was a statistically significant increase, which I understand you are saying wasn't present in this case, you testified earlier that when you see a low IQ score, among other things, you consider emotional interference, is that right?

A. Yes.

Q. Would removal of emotional interference such as child abuse explain an increase from [128] childhood testing to adult testing?

A. It could, yes.

Q. Now, you were asked both on direct and cross regarding removal from your consideration of the family declarations.

My question is, is scoring in a mentally retarded range as a child consistent with an abusive upbringing?

A. Yes, those children from an abusive upbringing very typically score low, yes.

Q. And is, as we just discussed, the increase from childhood to adult in IQ testing, is that consistent with the removal of emotional interference such as abuse?

A. Yes.

Q. Is placement in special ed. consistent with abuse?

A. Very typically, yes.

Q. Is Mr. Rompilla's 1976 MMPI consistent with an abusive profile?

A. Yes.

Q. By the way, that 1975 profile, is that the profile of an antisocial personality disorder?

A. No.

Q. The spike, I believe, is 48, is that [129] correct?

A. Correct.

Q. And as you indicated in your declaration 48 shows schizoid personality, isolation, nomadism, inability to achieve?

A. That's correct.

Q. We spent a bit of time trying to figure out how the rock hit Mr. Rompilla.

Although – well, withdrawn.

Is it possible that he was hit by more than one rock on that occasion?

MR. McINTYRE: Objection.

MR. WISEMAN: Your questions were just about as silly.

Q. Could you answer the question, Doctor?

A. Yes, it's possible.

MR. WISEMAN: So the record is clear, since the doctor didn't have his report in front of him, I would like to mark a copy of his declaration. I guess we are up to 16.

So the record is clear, the report has his CV attached to it.

(Crown Deposition Exhibit Number 2 was marked for identification.)

Q. Was the dynamic or the – was child [130] abuse as a clinical diagnosis something that was available to mental health practitioners in the 1970's and '80's?

A. Certainly.

Q. Was it available in your experience to capital attorneys that you worked with?

A. Certainly.

Q. In other words, you work with capital attorneys who talked about that as a possible mitigating defense –

A. Yes.

Q. – in a penalty phase?

A. Yes.

Q. Would that be true for organicity and brain damage as a – obviously that was known to mental health professionals in the '70's and '80's?

A. Yes, it was.

Q. Was that something in your experience you saw and heard capital attorneys consider as a defense during that time period?

A. Yes.

Q. All the collateral information in this case that we have talked about regarding the elementary school tests, the MMPI from the mid '70's, mid '70's achievement tests, the medical [131] records, are they all things that if you had as a neuropsychological – as a psychological evaluator you would have used in evaluating Mr. Rompilla in 1988?

A. Yes, that's correct.

Q. I think you said earlier it would have led you to do neuropsychological testing?

A. Yes, it would have.

Q. In your experience, as a forensic psychologist, and neuropsychologist, have you been retained by the prosecution in competency issues?

A. Yes, I have.

Q. Insanity issues?

A. Yes.

Q. Assessments of brain damage?

A. Yes.

Q. Have you ever been court appointed as an expert on any of these issues?

A. Yes, I have. And most typically that's the way that I have been involved.

Q. Has a Judge ever told you that your views on the death penalty disqualify you from being an expert as a court appointed expert?

A. No.

Q. Does the prosecution in your experience [132] generally retain experts to do mitigation evaluations?

A. No, they do not.

Q. Just to wrap us up here, in Mr. Rompilla's case, was the brain damage an extreme mental disturbance?

A. I'm sorry, could you repeat the question.

Q. In Mr. Rompilla's –

MR. McINTYRE: Objection. Asked and answered.

MR. WISEMAN: You impeached him – or tried to impeach him on cross.

MR. McINTYRE: How does it change what was said before?

MR. WISEMAN: We will still have his opinions after your cross-examination.

Q. In Mr. Rompilla's case, was the brain damage you found – did it constitute an extreme mental disturbance?

A. Yes.

Q. Does Mr. Rompilla's brain damage cause or did it cause an extreme emotional disturbance?

A. Yes, it did.

Q. Did his brain damage impair his capacity [133] to appreciate the criminality of his conduct?

A. Yes.

Q. Does Mr. Rompilla's brain damage and did his brain damage impair his capacity to conform his conduct to the requirements of law in 1988?

A. Yes, it did.

Q. And is brain damage and mental damage a defect?

A. Yes.

Q. At the time of your defense – withdrawn.

At the time of the offense, did Mr. Rompilla suffer from an extreme mental or emotional disturbance?

A. Yes.

Q. And at the time of the offense was his capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of law substantially impaired?

A. Yes, it was.

Q. Do you hold all those opinions to a reasonable degree of psychological and neuropsychological certainty?

A. Yes, I do.

MR. WISEMAN: Nothing further.

[134] * * *

RECROSS EXAMINATION

BY MR. McINTYRE:

Q. Just a few more questions. I promise they won't be lengthy.

You were just asked whether or not the government generally employed experts such as yourself on mitigation issues and your answer was no, correct?

A. That's correct.

Q. My question to you is, did the defense bar generally employ persons like you on the mitigation prior to 1988 in the Commonwealth of Pennsylvania?

MR. WISEMAN: How about Lehigh County?

A. Again, I don't know what the standard was in Pennsylvania at that time.

Q. Do I understand one of the first questions you were just asked on redirect is whether or not your opinion would be the same if you just had your test results and none of the background information that was given to you?

A. Yes.

Q. And your answer was yes, it was – yes, [135] it would be?

A. Yes.

Q. So you really didn't need any of the background information to reach your opinion?

A. As to brain damage, no.

Q. Doctor, what cases have you been retained by the Pennsylvania Post-Conviction Defender Organization in the last five years in which you have given them negative reports and not been asked to testify, would you please name those?

MR. WISEMAN: I would like to clarify the record. There was no Pennsylvania Post-Conviction Defender before July of 1994.

MR. NOLAS: For the record, Dr. Crown – Billy Nolas as litigation director of the office, I am instructing you not to answer the question. It's privileged information that may hurt other clients. We will take it up with the Judge. Do not answer.

Q. Dr. Crown, will you answer that question?

MR. NOLAS: I am instructing you not to answer that question, Dr. Crown.

A. I am unable to answer that not only based on Mr. Nolas's instruction but also under the [136] ethical provisions of the American Psychological Association.

Q. There's some requirement there, a regulation in that regard?

A. There's a regulation not to disclose information that may not be of public record, yes.

MR. NOLAS: So the record is clear, I am asserting privilege. I am asserting the eighth amendment rights of these other individuals. I am asserting the fundamental fairness in having information that may harm someone else's case elicited from a doctor that has not been disclosed in those cases.

Q. Whether or not you have done that or how many times you issued negative reports, we are not going to find out, is that right, Doctor?

A. Yes.

Q. The fact the person has a low IQ does not mean they were abused, does it?

A. No.

Q. I believe you brought out on direct there's many reasons a person could have a low IQ?

A. Yes.

Q. Genetics is one of them?

A. What's that?

[137] Q. Genetics is a possible explanation?

A. Yes.

Q. And there's many other?

Yes.

MR. McINTYRE: We don't have to go through them. All right. I have no further questions. Thank you.

* * *

REDIRECT EXAMINATION

BY MR. WISEMAN:

Q. One question, Dr. Crown, the background information that you – that we have discussed earlier regarding the collateral, you have mentioned collateral as to the testing.

Leaving aside the testing for a minute and looking at the collateral information, is that collateral information a red flag or does it constitute red flags that an evaluator would look to in their initial assessment of a forensic patient in a capital setting?

A. It's a red flag indicating that further objective evaluation is necessary.

Q. Just so the record is clear, we are talking about the abusive background, the mental retardation scores, the 1975 MMPI, the medical [138] records, the history of head injury, all those things?

A. Yes.

MR. WISEMAN: Nothing further.

MR. McINTYRE: No questions.

(Deposition concluded.)

[139] 4/7, 1996

I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the testimony of the within witness who was duly sworn by me, and that this is a correct transcript of the same.

/s/ Sally A. Slifer
Sally A. Slifer, RMR
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